

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 373

(SENATORS UNGER, KESSLER (MR. PRESIDENT), PALUMBO,
PLYMALE, LAIRD, YOST, MILLER, PREZIOSO, FITZSIMMONS,
WELLS, CANN, CHAFIN, TUCKER, STOLLINGS, COOKMAN
AND SNYDER, *original sponsors*)

[Passed March 8, 2014; in effect ninety days from passage.]

AN ACT to amend and reenact §16-1-2 and §16-1-9a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto three new sections, designated §16-1-9c, §16-1-9d and §16-1-9e; to amend and reenact §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-7 and §22-26-8 of said code; to amend said code by adding thereto a new article, designated §22-30-1, §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-20, §22-30-21, §22-30-22, §22-30-23, §22-30-24 and §22-30-25; to amend said code by adding thereto a new article, designated §22-31-1, §22-31-2, §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and

§22-31-12; and to amend said code by adding thereto a new article, designated §24-2G-1 and §24-2G-2, all relating to the protection of water resources and public health generally; defining terms generally; providing for rulemaking generally; providing for civil and criminal penalties generally; providing for the regulation of the public water systems by the Commissioner of the Bureau for Public Health; providing for entry into and evaluations of water systems; authorizing commissioner to seek injunctive relief; requiring source water protection plans; specifying contents of plan; requiring assessment and monitoring of plans; requiring Bureau of Public Health to coordinate the conduct of a long-term medical study; continuing wellhead and source water protection grant program; continuing grant fund to provide water source protection; revising the Water Resources Protection and Management Act; modifying registration requirements; requiring reports to the Secretary of the Department of Environmental Protection; requiring reports by secretary to legislative entities; requiring continuation of matching funds for stream-gauging network; modifying duties of legislative commission; requiring water resources survey and registry; requiring information from drilling contractors for water systems; adopting state water resources management plan; requiring reports from certain water users; establishing the Aboveground Storage Tank Act; requiring the secretary to compile inventory of aboveground storage tanks in the state; requiring registration; authorizing certain fees; requiring secretary to develop regulatory program for the tanks; providing minimum factors to be included in program; requiring annual inspection and certification of the tanks; requiring evidence of financial security; requiring corrective action and plans; requiring spill prevention response plans; requiring notice of inventory of tanks to local water systems and governments; requiring the posting of signs at the tanks; creating an administrative fund; creating the Protect Our Water Fund; authorizing public access to certain information;

authorizing inspections, monitoring and testing by secretary; authorizing secretary to issue administrative orders and seek injunctive relief; allowing appeals to Environmental Quality Board; prohibiting duplicative enforcement; requiring secretary to report to legislative entities; requiring interagency coordination; establishing duties of secretary upon imminent and substantial danger; providing additional duties and powers of secretary generally; providing certain exemptions; creating the Public Water Supply Protection Act; requiring inventories of sources of certain contaminants in the zones of critical concern of certain public water systems; requiring registration and permits; authorizing inspections, monitoring and testing by secretary; requiring individual NPDES permits in certain circumstances; authorizing secretary to require NPDES permits in certain circumstances; creating public water system supply study commission; membership of study commission; scope of study; establishing reporting requirements; requiring the establishment of advance warning, testing and monitoring at certain water utilities; requiring certain information be filed with the Public Water Commission; and requiring utility to report back to Legislature if technology is infeasible.

Be it enacted by the Legislature of West Virginia:

That §16-1-2 and §16-1-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto three new sections, designated §16-1-9c, §16-1-9d and §16-1-9e; that §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-7 and §22-26-8 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §22-30-1, §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-20, §22-30-21, §22-30-22, §22-30-23, §22-30-24 and §22-30-25; that said code be amended by adding thereto a new article, designated §22-31-1, §22-31-2,

§22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12; and that said code be amended by adding thereto a new article, designated §24-2G-1 and §24-2G-2, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-2. Definitions.

1 As used in this article:

2 (1) "Basic public health services" means those services
3 that are necessary to protect the health of the public. The
4 three areas of basic public health services are communicable
5 and reportable disease prevention and control, community
6 health promotion and environmental health protection;

7 (2) "Bureau" means the Bureau for Public Health in the
8 department;

9 (3) "Combined local board of health" means one form of
10 organization for a local board of health and means a board of
11 health serving any two or more counties or any county or
12 counties and one or more municipalities within or partially
13 within the county or counties;

14 (4) "Commissioner" means the commissioner of the
15 bureau, who is the state health officer;

16 (5) "County board of health" means one form of
17 organization for a local board of health and means a local
18 board of health serving a single county;

19 (6) "Department" means the West Virginia Department
20 of Health and Human Resources;

21 (7) "Director" or "director of health" means the state
22 health officer. Administratively within the department, the
23 bureau through its commissioner carries out the public health
24 functions of the department, unless otherwise assigned by the
25 secretary;

26 (8) "Essential public health services" means the core
27 public health activities necessary to promote health and
28 prevent disease, injury and disability for the citizens of the
29 state. The services include:

30 (A) Monitoring health status to identify community
31 health problems;

32 (B) Diagnosing and investigating health problems and
33 health hazards in the community;

34 (C) Informing, educating and empowering people about
35 health issues;

36 (D) Mobilizing community partnerships to identify and
37 solve health problems;

38 (E) Developing policies and plans that support individual
39 and community health efforts;

40 (F) Enforcing laws and rules that protect health and
41 ensure safety;

42 (G) Uniting people with needed personal health services
43 and assuring the provision of health care when it is otherwise
44 not available;

45 (H) Promoting a competent public health and personal
46 health care workforce;

47 (I) Evaluating the effectiveness, accessibility and quality
48 of personal and population-based health services; and

49 (J) Researching for new insights and innovative solutions
50 to health problems;

51 (9) "Licensing boards" means those boards charged with
52 regulating an occupation, business or profession and on
53 which the commissioner serves as a member;

54 (10) "Local board of health", "local board" or "board"
55 means a board of health serving one or more counties or one
56 or more municipalities or a combination thereof;

57 (11) "Local health department" means the staff of the
58 local board of health;

59 (12) "Local health officer" means the physician with a
60 current West Virginia license to practice medicine who
61 supervises and directs the activities, services, staff and
62 facilities of the local health department and is appointed by
63 the local board of health with approval by the commissioner;

64 (13) "Municipal board of health" means one form of
65 organization for a local board of health and means a board of
66 health serving a single municipality;

67 (14) "Performance-based standards" means generally
68 accepted, objective standards such as rules or guidelines
69 against which public health performance can be measured;

70 (15) "Potential source of significant contamination"
71 means a facility or activity that stores, uses or produces
72 substances or compounds with potential for significant
73 contaminating impact if released into the source water of a
74 public water supply.

75 (16) "Program plan" or "plan of operation" means the
76 annual plan for each local board of health that must be
77 submitted to the commissioner for approval;

78 (17) "Public groundwater supply source" means a
79 primary source of water supply for a public water system
80 which is directly drawn from a well, underground stream,
81 underground reservoir, underground mine or other primary
82 source of water supplies which is found underneath the
83 surface of the state.

84 (18) "Public surface water supply source" means a
85 primary source of water supply for a public water system
86 which is directly drawn from rivers, streams, lakes, ponds,
87 impoundments or other primary sources of water supplies
88 which are found on the surface of the state.

89 (19) "Public surface water influenced groundwater supply
90 source" means a source of water supply for a public water
91 system which is directly drawn from an underground well,
92 underground river or stream, underground reservoir or
93 underground mine, and the quantity and quality of the water
94 in that underground supply source is heavily influenced,
95 directly or indirectly, by the quantity and quality of surface
96 water in the immediate area.

97 (20) "Public water system" means:

98 (A) Any water supply or system which regularly supplies
99 or offers to supply water for human consumption through
100 pipes or other constructed conveyances, if serving at least an
101 average of twenty-five individuals per day for at least sixty
102 days per year, or which has at least fifteen service
103 connections, and shall include:

104 (i) Any collection, treatment, storage and distribution
105 facilities under the control of the owner or operator of the
106 system and used primarily in connection with the system; and

107 (ii) Any collection or pretreatment storage facilities not
108 under such control which are used primarily in connection
109 with the system.

110 (B) A public water system does not include a system
111 which meets all of the following conditions:

112 (i) Consists only of distribution and storage facilities and
113 does not have any collection and treatment facilities;

114 (ii) Obtains all of its water from, but is not owned or
115 operated by, a public water system which otherwise meets the
116 definition;

117 (iii) Does not sell water to any person; and

118 (iv) Is not a carrier conveying passengers in interstate
119 commerce.

120 (21) "Public water utility" means a public water system
121 which is regulated by the West Virginia Public Service
122 Commission pursuant to the provisions of chapter
123 twenty-four of this code.

124 (22) "Secretary" means the secretary of the department;

125 (23) "Service area" means the territorial jurisdiction of a
126 local board of health;

127 (24) "State Advisory Council on Public Health" means
128 the advisory body charged by this article with providing

129 advice to the commissioner with respect to the provision of
130 adequate public health services for all areas in the state;

131 (25) "State Board of Health" means the secretary,
132 notwithstanding any other provision of this code to the
133 contrary, whenever and wherever in this code there is a
134 reference to the State Board of Health.

135 (26) "Zone of critical concern" for a public surface water
136 supply is a corridor along streams within a watershed that
137 warrant more detailed scrutiny due to its proximity to the
138 surface water intake and the intake's susceptibility to
139 potential contaminants within that corridor. The zone of
140 critical concern is determined using a mathematical model
141 that accounts for stream flows, gradient and area topography.
142 The length of the zone of critical concern is based on a five-
143 hour time of travel of water in the streams to the water intake,
144 plus an additional one-fourth mile below the water intake.
145 The width of the zone of critical concern is one thousand feet
146 measured horizontally from each bank of the principal stream
147 and five hundred feet measured horizontally from each bank
148 of the tributaries draining into the principal stream.

§16-1-9a. Regulation of public water systems.

1 (a) The commissioner shall regulate public water systems
2 as prescribed in this section.

3 (b) The commissioner shall establish by legislative rule,
4 in accordance with article three, chapter twenty-nine-a of this
5 code:

6 (1) The maximum contaminant levels to which all public
7 water systems shall conform in order to prevent adverse
8 effects on the health of individuals;

9 (2) Treatment techniques that reduce the contaminant or
10 contaminants to a level which will not adversely affect the
11 health of the consumer;

12 (3) Provisions to protect and prevent contamination of
13 wellheads and well fields used by public water supplies so
14 that contaminants do not reach a level that would adversely
15 affect the health of the consumer;

16 (4) Minimum requirements for:

17 (A) Sampling and testing;

18 (B) System operation;

19 (C) Public notification by a public water system on being
20 granted a variance or exemption or upon failure to comply
21 with specific requirements of this section and regulations
22 promulgated under this section;

23 (D) Recordkeeping;

24 (E) Laboratory certification; and

25 (F) Procedures and conditions for granting variances and
26 exemptions to public water systems from state public water
27 systems' regulations.

28 (5) Requirements covering the production and
29 distribution of bottled drinking water;

30 (6) Requirements governing the taste, odor, appearance
31 and other consumer acceptability parameters of drinking
32 water; and

33 (7) Any other requirement the commissioner finds
34 necessary to effectuate the provisions of this article.

35 (c) The commissioner or his or her authorized
36 representatives or designees may enter any part of a public
37 water system, whether or not the system is in violation of a
38 legal requirement, for the purpose of inspecting, sampling or
39 testing and shall be furnished records or information
40 reasonably required for a complete inspection.

41 (d) The commissioner, his or her authorized
42 representative or designee may conduct an evaluation
43 necessary to assure the public water system meets federal safe
44 drinking water requirements. The public water system shall
45 provide a written response to the commissioner within thirty
46 days of receipt of the evaluation by the public water system,
47 addressing corrective actions to be taken as a result of the
48 evaluation.

49 (e)(1) Any individual or entity who violates any provision
50 of this article, or any of the rules or orders issued pursuant to
51 this article, is liable for a civil penalty not less than \$1,000
52 nor more than \$5,000. Each day's violation shall constitute
53 a separate offense.

54 (2) For a willful violation of a provision of this article, or
55 of any of the rules or orders issued under this article, an
56 individual or entity shall be subject to a civil penalty of not
57 more than \$10,000 and each day's violation shall be grounds
58 for a separate penalty.

59 (3) Civil penalties are payable to the commissioner. All
60 moneys collected under this section shall be deposited into a
61 restricted account known as the Safe Drinking Water Fund.
62 All moneys deposited into the fund shall be used by the
63 commissioner to provide technical assistance to public water
64 systems.

65 (f) The commissioner, or his or her authorized
66 representative, may also seek injunctive relief in the circuit
67 court of the county in which all or part of the public water
68 system is located for threatened or continuing violations.

**§16-1-9c. Required update or completion of source water
protection plans.**

1 (a) On or before July 1, 2016, each existing public water
2 utility which draws and treats water from a surface water
3 supply source or a surface water influenced groundwater
4 supply source shall submit to the commissioner an updated or
5 completed source water protection plan for each of its public
6 water system plants with such intakes to protect its public
7 water supplies from contamination. Every effort shall be
8 made to inform and engage the public, local governments,
9 local emergency planners, local health departments and
10 affected residents at all levels of the development of the
11 protection plan.

12 (b) The completed or updated plan for each affected
13 plant, at a minimum, shall include the following:

14 (1) A contingency plan that documents each public water
15 utility's planned response to contamination of its public
16 surface water supply source or its public surface water
17 influenced groundwater supply source;

18 (2) An examination and analysis of the public water
19 system's ability to isolate or divert contaminated waters from
20 its surface water intake or groundwater supply, and the
21 amount of raw water storage capacity for the public water
22 system's plant;

23 (3) An examination and analysis of the public water
24 system's existing ability to switch to an alternative water

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25 source or intake in the event of contamination of its primary
26 water source;

27 (4) An analysis and examination of the public water
28 system's existing ability to close its water intake in the event
29 the system is advised that its primary water source has
30 become contaminated due to a spill or release into a stream,
31 and the duration of time it can keep that water intake closed
32 without creating a public health emergency;

33 (5) The following operational information for each plant
34 receiving water supplies from a surface water source:

35 (A) The average number of hours the plant operates each
36 day, and the maximum and minimum number of hours of
37 operation in one day at that plant during the past year; and

38 (B) The average quantities of water treated and produced
39 by the plant per day, and the maximum and minimum
40 quantities of water treated and produced at that plant in one
41 day during the past year;

42 (6) An analysis and examination of the public water
43 system's existing available storage capacity on its system,
44 how its available storage capacity compares to the public
45 water system's normal daily usage and whether the public
46 water system's existing available storage capacity can be
47 effectively utilized to minimize the threat of contamination to
48 its system;

49 (7) The calculated level of unaccounted for water
50 experienced by the public water system for each surface
51 water intake, determined by comparing the measured
52 quantities of water which are actually received and used by
53 customers served by that water plant to the total quantities of
54 water treated at the water plant over the past year. If the

55 calculated ratio of those two figures is less than eighty-five
56 percent, the public water system is to describe all of the
57 measures it is actively taking to reduce the level of water loss
58 experienced on its system;

59 (8) A list of the potential sources of significant
60 contamination contained within the zone of critical concern
61 as provided by the Department of Environmental Protection,
62 the Bureau for Public Health and the Division of Homeland
63 Security and Emergency Management. The exact location of
64 the contaminants within the zone of critical concern is not
65 subject to public disclosure in response to a Freedom of
66 Information Act request under article one, chapter
67 twenty-nine-b of this code. However, the location,
68 characteristics and approximate quantities of potential
69 sources of significant contamination within the zone of
70 critical concern shall be made known to one or more
71 designees of the public water utility, and shall be maintained
72 in a confidential manner by the public water utility. In the
73 event of a chemical spill, release or related emergency,
74 information pertaining to any spill or release of contaminant
75 shall be immediately disseminated to any emergency
76 responders responding to the site of a spill or release, and the
77 general public shall be promptly notified in the event of a
78 chemical spill, release or related emergency.

79 (9) If the public water utility's water supply plant is
80 served by a single-source intake to a surface water source of
81 supply or a surface water influenced source of supply, the
82 submitted plan shall also include an examination and analysis
83 of the technical and economic feasibility of each of the
84 following options to provide continued safe and reliable
85 public water service in the event its primary source of supply
86 is detrimentally affected by contamination, release, spill event
87 or other reason:

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88 (A) Constructing or establishing a secondary or backup
89 intake which would draw water supplies from a substantially
90 different location or water source;

91 (B) Constructing additional raw water storage capacity
92 and/or treated water storage capacity, to provide at least two
93 days of system storage, based on the plant's maximum level
94 of production experienced within the past year;

95 (C) Creating or constructing interconnections between the
96 public water system with other plants on the public water
97 utility system or another public water system, to allow the
98 public water utility to receive its water from a different
99 source of supply during a period its primary water supply
100 becomes unavailable or unreliable due to contamination,
101 release, spill event or other circumstance;

102 (D) Any other alternative which is available to the public
103 water utility to secure safe and reliable alternative supplies
104 during a period its primary source of supply is unavailable or
105 negatively impacted for an extended period; and

106 (E) If one or more alternatives set forth in paragraphs (A)
107 through (D) of this subdivision is determined to be
108 technologically or economically feasible, the public water
109 utility shall submit an analysis of the comparative costs, risks
110 and benefits of implementing each of the described
111 alternatives;

112 (10) A management plan that identifies specific activities
113 that will be pursued by the public water utility, in cooperation
114 and in concert with the Bureau for Public Health, local health
115 departments, local emergency responders, local emergency
116 planning committee, and other state, county or local agencies
117 and organizations to protect its source water supply from
118 contamination, including, but not limited to, notification to

119 and coordination with state and local government agencies
120 whenever the use of its water supply is inadvisable or
121 impaired, to conduct periodic surveys of the system, the
122 adoption of best management practices, the purchase of
123 property or development rights, conducting public education
124 or the adoption of other management techniques
125 recommended by the commissioner or included in the source
126 water protection plan;

127 (11) A communications plan that documents the manner
128 in which the public water utility, working in concert with
129 state and local emergency response agencies, shall notify the
130 local health agencies and the public of the initial spill or
131 contamination event and provide updated information related
132 to any contamination or impairment of the source water
133 supply or the system's drinking water supply, with an initial
134 notification to the public to occur in any event no later than
135 thirty minutes after the public water system becomes aware
136 of the spill, release or potential contamination of the public
137 water system;

138 (12) A complete and comprehensive list of the potential
139 sources of significant contamination contained within the
140 zone of critical concern, based upon information which is
141 directly provided or can otherwise be requested and obtained
142 from the Department of Environmental Protection, the
143 Bureau for Public Health, the Division of Homeland Security
144 and Emergency Management and other resources; and

145 (13) An examination of the technical and economic
146 feasibility of implementing an early warning monitoring
147 system.

148 (c) Any public water utility's public water system with a
149 primary surface water source of supply or a surface water
150 influenced groundwater source of supply that comes into

151 existence on or after the effective date of this article shall
152 submit prior to the commencement of its operations a source
153 water protection plan satisfying the requirements of
154 subsection (b) of this section.

155 (d) The commissioner shall review a plan submitted
156 pursuant to this section and provide a copy to the Secretary
157 of the Department of Environmental Protection. Thereafter,
158 within one hundred eighty days of receiving a plan for
159 approval, the commissioner may approve, reject or modify
160 the plan as may be necessary and reasonable to satisfy the
161 purposes of this article. The commissioner shall consult with
162 the local public health officer and conduct at least one public
163 hearing when reviewing the plan. Failure by a public water
164 system to comply with a plan approved pursuant to this
165 section is a violation of this article.

166 (e) The commissioner may request a public water utility
167 to conduct one or more studies to determine the actual risk
168 and consequences related to any potential source of
169 significant contamination identified by the plan, or as
170 otherwise made known to the commissioner.

171 (f) Any public water utility required to file a complete or
172 updated plan in accordance with the provisions of this section
173 shall submit an updated source water protection plan at least
174 every three years or when there is a substantial change in the
175 potential sources of significant contamination within the
176 identified zone of critical concern.

177 (g) Any public water utility required to file a complete or
178 updated plan in accordance with the provisions of this section
179 shall review any source water protection plan it may currently
180 have on file with the bureau and update it to ensure it
181 conforms with the requirements of subsection (b) of this
182 section on or before July 1, 2016.

183 (h) The commissioner's authority in reviewing and
184 monitoring compliance with a source water protection plan
185 may be transferred by the bureau to a nationally accredited
186 local board of public health.

**§16-1-9d. Wellhead and Source Water Protection Grant
Program.**

1 (a) The commissioner shall continue the Wellhead and
2 Source Water Protection Grant Program.

3 (b) The fund heretofore created to provide funds for the
4 Wellhead and Source Water Protection Grant Program is
5 continued in the State Treasury and shall be known as the
6 Wellhead and Source Water Protection Grant Fund. The
7 fund shall be administered by the commissioner and shall
8 consist of all moneys made available for the program from
9 any source, including but not limited to all fees, civil
10 penalties and assessed costs, all gifts, grants, bequests or
11 transfers from any source, any moneys that may be
12 appropriated and designated for the program by the
13 Legislature and all interest or other return earned from
14 investment of the fund. Expenditures from the fund shall be
15 for the purposes set forth in this article to provide water
16 source protection pursuant to the program and are not
17 authorized from collections but are to be made only in
18 accordance with appropriation by the Legislature and in
19 accordance with the provisions of article three, chapter
20 twelve of this code and upon the fulfillment of the provisions
21 set forth in article two, chapter eleven-b of this
22 code: *Provided*, That for the fiscal years ending June 30,
23 2014 and 2015, expenditures are authorized from collections
24 rather than pursuant to an explicit appropriation by the
25 Legislature. Any balance, including accrued interest and
26 other returns, remaining in the fund at the end of each fiscal
27 year shall not revert to the General Revenue Fund but shall

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28 remain in the fund and be expended as provided by this
29 section.

30 (c) In prospectively awarding any grants under the
31 Wellhead and Source Water Protection Grant Program, the
32 commissioner shall prioritize those public water systems
33 where there is the highest probability of contamination of the
34 water source based on the source water assessment report or
35 the source water protection plans which were previously
36 performed. Priority shall also be extended to publicly owned
37 public water systems over privately owned public water
38 systems.

39 (d) The commissioner, or his or her designee, shall apply
40 for and diligently pursue all available federal funds to help
41 offset the cost of completing source water protection plans by
42 the deadlines established in section nine-c of this article.

43 (e) The commissioner may receive any gift, federal grant,
44 other grant, donation or bequest and receive income and other
45 funds or appropriations to contribute to the Wellhead and
46 Source Water Protection Plan Grant Program.

§16-1-9e. Long-term medical study.

1 The Bureau for Public Health shall endeavor to engage
2 the Centers for Disease Control and other federal agencies for
3 the purpose of creating, organizing and implementing a
4 medical study to assess any long-term health effects resulting
5 from the chemical spill that occurred on January 9, 2014, and
6 which exposed the public to chemicals, including 4-
7 methylcyclohexane.

8 The commissioner shall conduct such study pursuant to
9 the authority granted to the commissioner pursuant to article
10 one, section six, chapter sixteen of this code: *Provided*, That

11 in the event the commissioner determines that, in order to
12 adequately perform such study, additional authority is
13 required, the commissioner shall provide a report of such
14 additional authority requested to the Governor and the Joint
15 Committee on Government and Finance.

16 The commissioner shall cause to be collected and
17 preserved information from health providers who treated
18 patients presenting with symptoms diagnosed as having been
19 caused or exacerbated as a result of exposure related to the
20 January 9, 2014, chemical spill. The commissioner shall
21 analyze such data and other information deemed relevant by
22 the commissioner and provide a report of the commissioner's
23 findings regarding potential long-term health effects of the
24 January 9, 2014, chemical spill to the Joint Committee on
25 Health by January 1, 2015, including the results of its efforts
26 to engage federal cooperation and assistance for a long-term
27 comprehensive study on the costs of conducting such study
28 on behalf of the state.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 26. WATER RESOURCES PROTECTION AND MANAGEMENT ACT.

§22-26-2. Definitions.

1 For purposes of this article:

2 (1) "Baseline average" means the average amount of
3 water withdrawn by a large-quantity user over a
4 representative historical time period as defined by the
5 secretary.

6 (2) "Beneficial use" means uses that include, but are not
7 limited to, public or private water supplies, agriculture,

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8 tourism, commercial, industrial, coal, oil and gas and other
9 mineral extraction, preservation of fish and wildlife habitat,
10 maintenance of waste assimilation, recreation, navigation and
11 preservation of cultural values.

12 (3) "Commercial well" means a well that serves small
13 businesses and facilities in which water is the prime
14 ingredient of the service rendered, including water wells
15 drilled to support horizontal well operations.

16 (4) "Community water system" means a public water
17 system that pipes water for human consumption to at least
18 fifteen service connections used by year-round residents or
19 one that regularly serves at least twenty-five residents.

20 (5) "Consumptive withdrawal" means any withdrawal of
21 water which returns less water to the water body than is
22 withdrawn.

23 (6) "Department" means the West Virginia Department
24 of Environmental Protection.

25 (7) "Farm use" means irrigation of any land used for
26 general farming, forage, aquaculture, pasture, orchards,
27 nurseries, the provision of water supply for farm animals,
28 poultry farming or any other activity conducted in the course
29 of a farming operation.

30 (8) "Industrial well" means a well used exclusively for
31 nonpotable purposes, including industrial processing, fire
32 protection, washing, packing or manufacturing of a product
33 excluding food and beverages, or other nonpotable uses.

34 (9) "Interbasin transfer" means the permanent removal of
35 water from the watershed from which it is withdrawn.

36 (10) "Large-quantity user" means any person who
37 withdraws over three hundred thousand gallons of water in
38 any thirty-day period from the state's waters and any person
39 who bottles water for resale regardless of quantity withdrawn.
40 "Large-quantity user" excludes farm use, including watering
41 livestock or poultry on a farm, though farms may voluntarily
42 report water withdrawals to assist with the accuracy of the
43 survey.

44 (11) "Maximum potential" means the maximum designed
45 capacity of a facility to withdraw water under its physical and
46 operational design.

47 (12) "Noncommunity nontransient water system" means
48 a public water system that serves at least twenty-five of the
49 same persons over six months per year.

50 (13) "Nonconsumptive withdrawal" means any
51 withdrawal of water which is not a consumptive withdrawal
52 as defined in this section.

53 (14) "Person", "persons" or "people" means an
54 individual, public and private business or industry, public or
55 private water service and governmental entity.

56 (15) "Secretary" means the Secretary of the Department
57 of Environmental Protection or his or her designee.

58 (16) "Transient water system" means a public water
59 system that serves at least twenty-five transient people at
60 least sixty days a year.

61 (17) "Test well" means a well that is used to obtain
62 information on groundwater quantity, quality, aquifer
63 characteristics and availability of production water supply for
64 manufacturing, commercial and industrial facilities.

65 (18) "Water resources", "water" or "waters" means any
66 and all water on or beneath the surface of the ground,
67 whether percolating, standing, diffused or flowing, wholly or
68 partially within this state, or bordering this state and within
69 its jurisdiction and includes, without limiting the generality
70 of the foregoing, natural or artificial lakes, rivers, streams,
71 creeks, branches, brooks, ponds, impounding reservoirs,
72 springs, wells, watercourses and wetlands: *Provided*, That
73 farm ponds, industrial settling basins and ponds and waste
74 treatment facilities are excluded from the waters of the state.

75 (19) "Watershed" means a hydrologic unit utilized by the
76 United States Department of Interior's Geological Survey,
77 adopted in 1974, as a framework for detailed water and
78 related land-resources planning.

79 (20) "Withdrawal" means the removal or capture of water
80 from water resources of the state regardless of whether it is
81 consumptive or nonconsumptive: *Provided*, That water
82 encountered during coal, oil, gas, water well drilling and
83 initial testing of water wells, or other mineral extraction and
84 diverted, but not used for any purpose and not a factor in
85 low-flow conditions for any surface water or groundwater, is
86 not deemed a withdrawal.

**§22-26-3. Waters claimed by state; water resources protection
survey; registration requirements; agency
cooperation; information gathering.**

1 (a) The waters of the State of West Virginia are claimed
2 as valuable public natural resources held by the state for the
3 use and benefit of its citizens. The state shall manage and
4 protect its waters effectively for present and future use and
5 enjoyment and for the protection of the environment.
6 Therefore, it is necessary for the state to determine the nature
7 and extent of its water resources, the quantity of water being

8 withdrawn or otherwise used and the nature of the
9 withdrawals or other uses: *Provided*, That no provisions of
10 this article may be construed to amend or limit any other
11 rights and remedies created by statute or common law in
12 existence on the date of the enactment of this article.

13 (b) The secretary shall conduct an ongoing water
14 resources survey of consumptive and nonconsumptive surface
15 water and groundwater withdrawals by large-quantity users
16 in this state. The secretary shall determine the form and
17 format of the information submitted, including the use of
18 electronic submissions. The secretary shall establish and
19 maintain a statewide registration program to monitor large-
20 quantity users of water resources.

21 (c) Large-quantity users, except those who purchase water
22 from a public or private water utility or other service that is
23 reporting its total withdrawal, shall register with the department
24 and provide all requested survey information regarding
25 withdrawals of the water resources. Multiple withdrawals from
26 state water resources that are made or controlled by a single
27 person and used at one facility or location shall be considered
28 a single withdrawal of water. Water withdrawals for
29 self-supplied farm use and private households will be estimated.
30 Water utilities regulated by the Public Service Commission
31 pursuant to article two, chapter twenty-four of this code are
32 exempted from providing information on interbasin transfers to
33 the extent those transfers are necessary to provide water utility
34 services within the state.

35 (d) Except as provided in subsection (f) of this section,
36 large-quantity users who withdraw water from a West
37 Virginia water resource shall comply with the survey and
38 registration requirements of this article. Registration shall be
39 maintained annually by every large-quantity user on forms
40 and in a manner prescribed by the secretary.

41 (e) The secretary shall maintain a listing of all large-
42 quantity users and each user's baseline average water
43 withdrawal.

44 (f) The secretary shall make a good faith effort to obtain
45 survey and registration information from persons who are
46 withdrawing water from in-state water resources, but who are
47 located outside the state borders.

48 (g) All state agencies and local governmental entities that
49 have a regulatory, research, planning or other function
50 relating to water resources, including, but not limited to, the
51 State Geological and Economic Survey, the Division of
52 Natural Resources, the Public Service Commission, the
53 Bureau for Public Health, the Commissioner of the
54 Department of Agriculture, the Division of Homeland
55 Security and Emergency Management, Marshall University,
56 West Virginia University and regional, county and municipal
57 planning authorities may enter into interagency agreements
58 with the secretary and shall cooperate by: (i) Providing
59 information relating to the water resources of the state; (ii)
60 providing any necessary assistance to the secretary in
61 effectuating the purposes of this article; and (iii) assisting in
62 the development of a state water resources management plan.
63 The secretary shall determine the form and format of the
64 information submitted by these agencies.

65 (h) Persons required to participate in the survey and
66 registration shall provide any reasonably available
67 information on stream flow conditions that impact withdrawal
68 rates.

69 (i) Persons required to participate in the survey and
70 registration shall provide the most accurate information
71 available on water withdrawal during seasonal conditions and
72 future potential maximum withdrawals or other information

73 that the secretary determines is necessary for the completion
74 of the survey or registration: *Provided*, That a coal-fired
75 electric generating facility shall also report the nominal
76 design capacity of the facility, which is the quantity of water
77 withdrawn by the facility's intake pumps necessary to operate
78 the facility during a calendar day.

79 (j) The secretary shall, to the extent reliable water
80 withdrawal data is reasonably available from sources other
81 than persons required to provide data and participate in the
82 survey and registration, utilize that data to fulfill the
83 requirements of this section. If the data is not reasonably
84 available to the secretary, persons required to participate in
85 the survey and registration are required to provide the data.
86 Altering locations of intakes and discharge points that result
87 in an impact to the withdrawal of the water resources shall
88 also be reported.

89 (k) The secretary shall report annually to the Joint
90 Legislative Oversight Commission on State Water Resources
91 on the survey results. The secretary shall also make a
92 progress report annually on the implementation of the State
93 Water Resources Management Plan and any significant
94 changes that may have occurred since the State Water
95 Resources Management Plan was submitted in 2013.

96 (l) In addition to any requirements for completion of the
97 survey established by the secretary, the survey must
98 accurately reflect both actual and maximum potential water
99 withdrawal. Actual withdrawal shall be established through
100 metering, measuring or alternative accepted scientific
101 methods to obtain a reasonable estimate or indirect
102 calculation of actual use.

103 (m) The secretary shall make recommendations to the
104 Joint Legislative Oversight Commission on Water Resources

105 created in section five of this article relating to the
106 implementation of a water quantity management strategy for
107 the state or regions of the state where the quantity of water
108 resources are found to be currently stressed or likely to be
109 stressed due to emerging beneficial or other uses, ecological
110 conditions or other factors requiring the development of a
111 strategy for management of these water resources.

112 (n) The secretary may propose rules pursuant to article
113 three, chapter twenty-nine-a of this code as necessary to
114 implement the survey registration or plan requirements of this
115 article.

116 (o) The secretary is authorized to enter into cooperative
117 agreements with local, state and federal agencies and private
118 policy or research groups to obtain federal matching funds,
119 conduct research and analyze survey and registration data and
120 other agreements as may be necessary to carry out his or her
121 duties under this article.

122 (p) The department, the Division of Natural Resources, the
123 Division of Highways and the Conservation Agency
124 (cooperating state agencies) shall continue providing matching
125 funds for the United States Geological Survey's (USGS)
126 stream-gauging network to the maximum extent practicable.
127 Should a cooperating state agency become unable to maintain
128 its contribution level, it should notify the USGS and the
129 commission of its inability to continue funding for the
130 subsequent federal fiscal year by July 1 in order to allow for the
131 possible identification of alternative funding resources.

**§22-26-5. Joint Legislative Oversight Commission on State
Water Resources.**

1 (a) The President of the Senate and the Speaker of the
2 House of Delegates shall each designate five members of

3 their respective houses, at least one of whom shall be a
4 member of the minority party, to serve on a joint legislative
5 oversight commission charged with immediate and ongoing
6 oversight of the water resources survey, registration and
7 development of a state water resources management plan.
8 This commission shall be known as the Joint Legislative
9 Oversight Commission on State Water Resources and shall
10 regularly investigate and monitor all matters relating to water
11 resources, including the survey and plan.

12 (b) The expenses of the commission, including the cost of
13 conducting the survey and monitoring any subsequent
14 strategy and those incurred in the employment of legal,
15 technical, investigative, clerical, stenographic, advisory and
16 other personnel, are to be approved by the Joint Committee
17 on Government and Finance and paid from legislative
18 appropriations.

§22-26-6. Mandatory survey and registration compliance.

1 (a) The water resources survey and subsequent registry
2 will provide critical information for protection of the state's
3 water resources and, thus, mandatory compliance with the
4 survey and registry is necessary.

5 (b) All large-quantity users who withdraw water from a
6 West Virginia water resource shall complete the survey and
7 register use with the department. Any person who fails to
8 complete the survey or register, provides false or misleading
9 information on the survey or registration, or fails to provide
10 other information as required by this article may be subject to
11 a civil administrative penalty not to exceed \$5,000 to be
12 collected by the secretary consistent with the secretary's
13 authority pursuant to this chapter. Every thirty days after the
14 initial imposition of the civil administrative penalty, another
15 penalty may be assessed if the information is not provided.

16 The secretary shall provide written notice of failure to
17 comply with this section thirty days prior to assessing the first
18 administrative penalty.

§22-26-7. Secretary authorized to log wells; collect data.

1 (a) In order to obtain important information about the
2 state's surface and groundwater, the secretary is authorized
3 to collect scientific data on surface and groundwater and to
4 enter into agreements with local and state agencies, the
5 federal government and private entities to obtain this
6 information.

7 (b) Any person who installs a community water system,
8 noncommunity nontransient water system, transient water
9 system, commercial well, industrial or test well shall notify
10 the secretary of his or her intent to drill a water well no less
11 than ten days prior to commencement of drilling. The
12 ten-day notice is the responsibility of the owner, but may be
13 given by the drilling contractor.

14 (c) The secretary has the authority to gather data, including
15 driller and geologist logs, run electric and other remote-sensing
16 logs and devices and perform physical characteristics tests on
17 nonresidential and multifamily water wells.

18 (d) The drilling contractor shall submit to the secretary a
19 copy of the well completion forms submitted to the Bureau
20 for Public Health for a community water system,
21 noncommunity nontransient water system, transient water
22 system, commercial well, industrial or test well. The drilling
23 contractor shall also provide the well GPS location and depth
24 to groundwater on the well report submitted to the secretary.

25 (e) Any person who fails to notify the secretary prior to
26 drilling a well or impedes collection of information by the

27 secretary under this section is in violation of the Water
28 Resources Protection and Management Act and is subject to
29 the civil administrative penalty authorized by section six of
30 this article.

31 (f) Any well contracted for construction by the secretary
32 for groundwater or geological testing must be constructed at
33 a minimum to well design standards as promulgated by the
34 Bureau for Public Health. Any wells contracted for
35 construction by the secretary for groundwater or geological
36 testing that would at a later date be converted to a public use
37 water well must be constructed to comport to state public
38 water design standards.

**§22-26-8. State Water Resources Management Plan; powers
and duty of secretary.**

1 (a) The secretary shall oversee the development of a State
2 Water Resources Management Plan to be completed no later
3 than November 30, 2013. The plan shall be reviewed and
4 revised as needed after its initial adoption. The plan shall be
5 developed with the cooperation and involvement of local and
6 state agencies with regulatory, research or other functions
7 relating to water resources including, but not limited to, those
8 agencies and institutions of higher education set forth in
9 section three of this article and a representative of large-
10 quantity users. The State Water Resources Management Plan
11 shall be developed utilizing the information obtained
12 pursuant to said section and any other relevant information
13 available to the secretary.

14 (b) The secretary shall develop definitions for use in the
15 State Water Resources Management Plan for terms that are
16 defined differently by various state and federal governmental
17 entities as well as other terms necessary for implementation
18 of this article.

19 (c) The secretary shall continue to develop and obtain the
20 following:

21 (1) An inventory of the surface water resources of each
22 region of this state, including an identification of the
23 boundaries of significant watersheds and an estimate of the
24 safe yield of sources for consumptive and nonconsumptive
25 uses during periods of normal conditions and drought.

26 (2) A listing of each consumptive or nonconsumptive
27 withdrawal by a large-quantity user, including the amount of
28 water used, location of the water resources, the nature of the
29 use, location of each intake and discharge point by longitude
30 and latitude where available and, if the use involves more
31 than one watershed or basin, the watersheds or basins
32 involved and the amount transferred.

33 (3) A plan for the development of the infrastructure
34 necessary to identify the groundwater resources of each
35 region of this state, including an identification of aquifers and
36 groundwater basins and an assessment of their safe yield,
37 prime recharge areas, recharge capacity, consumptive limits
38 and relationship to stream base flows.

39 (4) After consulting with the appropriate state and federal
40 agencies, assess and project the existing and future
41 nonconsumptive use needs of the water resources required to
42 serve areas with important or unique natural, scenic,
43 environmental or recreational values of national, regional,
44 local or statewide significance, including national and state
45 parks; designated wild, scenic and recreational rivers;
46 national and state wildlife refuges; and the habitats of federal
47 and state endangered or threatened species.

48 (5) Assessment and projection of existing and future
49 consumptive use demands.

50 (6) Identification of potential problems with water
51 availability or conflicts among water uses and users
52 including, but not limited to, the following:

53 (A) A discussion of any area of concern regarding
54 historical or current conditions that indicate a low-flow
55 condition or where a drought or flood has occurred or is
56 likely to occur that threatens the beneficial use of the surface
57 water or groundwater in the area; and

58 (B) Current or potential in-stream or off-stream uses that
59 contribute to or are likely to exacerbate natural low-flow
60 conditions to the detriment of the water resources.

61 (7) Establish criteria for designation of critical water
62 planning areas comprising any significant hydrologic unit
63 where existing or future demands exceed or threaten to
64 exceed the safe yield of available water resources.

65 (8) An assessment of the current and future capabilities
66 of public water supply agencies and private water supply
67 companies to provide an adequate quantity and quality of
68 water to their service areas.

69 (9) An assessment of floodplain and stormwater
70 management problems.

71 (10) Efforts to improve data collection, reporting and
72 water monitoring where prior reports have found
73 deficiencies.

74 (11) A process for identifying projects and practices that
75 are being, or have been, implemented by water users that
76 reduce the amount of consumptive use, improve efficiency in
77 water use, provide for reuse and recycling of water, increase
78 the supply or storage of water or preserve or increase

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79 groundwater recharge and a recommended process for
80 providing appropriate positive recognition of those projects
81 or practices in actions, programs, policies, projects or
82 management activities.

83 (12) An assessment of both structural and nonstructural
84 alternatives to address identified water availability problems,
85 adverse impacts on water uses or conflicts between water
86 users, including potential actions to develop additional or
87 alternative supplies, conservation measures and management
88 techniques.

89 (13) A review and evaluation of statutes, rules, policies
90 and institutional arrangements for the development,
91 conservation, distribution and emergency management of
92 water resources.

93 (14) A review and evaluation of water resources
94 management alternatives and recommended programs,
95 policies, institutional arrangements, projects and other
96 provisions to meet the water resources needs of each region
97 and of this state.

98 (15) Proposed methods of implementing various
99 recommended actions, programs, policies, projects or
100 management activities.

101 (d) The State Water Resources Management Plan shall
102 consider:

103 (1) The interconnections and relationships between
104 groundwater and surface water as components of a single
105 hydrologic resource.

106 (2) Regional or watershed water resources needs,
107 objectives and priorities.

108 (3) Federal, state and interstate water resource policies,
109 plans, objectives and priorities, including those identified in
110 statutes, rules, regulations, compacts, interstate agreements or
111 comprehensive plans adopted by federal and state agencies
112 and compact basin commissions.

113 (4) The needs and priorities reflected in comprehensive
114 plans and zoning ordinances adopted by a county or
115 municipal government.

116 (5) The water quantity and quality necessary to support
117 reasonable and beneficial uses.

118 (6) A balancing and encouragement of multiple uses of
119 water resources, recognizing that all water resources of this
120 state are capable of serving multiple uses and human needs,
121 including multiple uses of water resources for reasonable and
122 beneficial uses.

123 (7) The distinctions between short-term and long-term
124 conditions, impacts, needs and solutions to ensure appropriate
125 and cost-effective responses to water resources issues.

126 (8) Application of the principle of equal and uniform
127 treatment of all water users that are similarly situated without
128 regard to established political boundaries.

129 (e) Each November, the secretary shall report to the Joint
130 Legislative Oversight Commission on State Water Resources
131 on the implementation of the State Water Resources
132 Management Plan.

133 (f) The State Water Resources Management Plan is
134 adopted. Persons identified as large-quantity users prior to
135 the effective date of this subsection shall report actual
136 monthly water withdrawals, or monthly water withdrawals by

137 a method approved by the secretary, for the previous calendar
138 year by March 31 of each succeeding year. Persons
139 identified as large-quantity users on or after the effective date
140 of this subsection shall submit their initial annual report no
141 later than March 31, 2016, and subsequent annual reports by
142 March 31 of each year thereafter.

**ARTICLE 30. THE ABOVEGROUND STORAGE TANK
ACT.**

§22-30-1. Short title.

1 This article may be known and cited as the Aboveground
2 Storage Tank Act.

§22-30-2. Legislative findings.

1 (a) The West Virginia Legislature finds the public policy
2 of the State of West Virginia is to protect and conserve the
3 water resources for the state and its citizens. The state's
4 water resources are vital natural resources that are essential
5 to maintain, preserve and promote human health, quality of
6 life and economic vitality of the state.

7 (b) The West Virginia Legislature further finds the public
8 policy of the state is for clean, uncontaminated water to be
9 made available for its citizens who are dependent on clean
10 water as a basic need for survival, and who rely on the
11 assurances from public water systems and the government
12 that the water is safe to consume.

13 (c) The West Virginia Legislature further finds it in the
14 public policy of the state that clean, uncontaminated water be
15 available to its businesses and industries that rely on water
16 for their economic survival, and the well-being of their
17 employees. These include hospitals and the medical industry,

18 schools and educational institutions, the food and hospitality
19 industries, the tourism industry, manufacturing, coal, natural
20 gas and other industries. Businesses and industries searching
21 for places to locate or relocate consider the quality of life for
22 their employees as well as the quality of the raw materials
23 such as clean water.

24 (d) The Legislature further finds that large quantities of
25 fluids are stored in aboveground storage tanks within the state
26 and that emergency situations involving these fluids can and
27 will arise that may present a hazard to human health, safety,
28 the water resources, the environment and the economy of the
29 state. The Legislature further recognizes that some of these
30 fluids have been stored in aboveground storage tanks in a
31 regulated manner insufficient to protect human health, safety,
32 water resources, the environment and the economy of the
33 state.

§22-30-3. Definitions.

1 For purposes of this article:

2 (1) "Aboveground storage tank" or "tank" means a device
3 made to contain an accumulation of more than one thousand
4 three hundred twenty gallons of fluids that are liquids at
5 standard temperature and pressure, which is constructed
6 primarily of noncarbon materials, including wood, concrete,
7 steel, plastic or fiberglass reinforced plastic, which provide
8 structural support, more than ninety percent capacity of
9 which is above the surface of the ground, but does not
10 include any process vessel. The term includes stationary
11 devices which are permanently affixed, and mobile devices
12 which remain in one location on a continuous basis for sixty
13 or more days, and includes all ancillary aboveground pipes
14 and dispensing systems up to the first point of isolation and
15 all ancillary underground pipes and dispensing systems

16 connected to the aboveground containers to the first point of
17 isolation. Notwithstanding any other provision of this code
18 to the contrary, shipping containers, including railroad freight
19 cars, subject to federal regulation under the Federal Railroad
20 Safety Act, 49 U. S. C. §§20101-2015, as amended, including,
21 but not limited to, federal regulations promulgated thereunder
22 at 49 CFR 172, 173 or 174, or subject to other federal law
23 governing the transportation of hazardous materials are not
24 subject to any provision of this article or of article thirty-one
25 of this chapter. Notwithstanding any other provision of this
26 code to the contrary, barges or boats subject to federal
27 regulation under the United States Coast Guard, United States
28 Department of Homeland Security, including but not limited
29 to federal regulations promulgated at 33 CFR 1, et seq, or
30 subject to other federal law governing the transportation of
31 hazardous materials are not subject to any provision of this
32 article or of article thirty-one of this chapter.
33 Notwithstanding any other provision of this code to the
34 contrary, swimming pools are not subject to any provision of
35 this article or article thirty-one of this chapter.

36 (2) "Department" means the West Virginia Department
37 of Environmental Protection.

38 (3) "Nonoperational storage tank" means an empty
39 aboveground storage tank in which fluids will not be
40 deposited or from which fluids will not be dispensed on or
41 after the effective date of this article.

42 (4) "Operator" means any person in control of, or having
43 responsibility for, the daily operation of an aboveground
44 storage tank.

45 (5) "Owner" means a person who holds title to, controls
46 or owns an interest in an aboveground storage tank, including
47 owners of tanks immediately preceding the discontinuation of

48 a tank's use. "Owner" does not mean a person who holds an
49 interest in a tank for financial security, unless the holder has
50 taken possession of and operated the tank.

51 (6) "Person", "persons" or "people" means any
52 individual, trust, firm, owner, operator, corporation or other
53 legal entity, including the United States government, an
54 interstate commission or other body, the state or any agency,
55 board, bureau, office, department or political subdivision of
56 the state, but does not include the Department of
57 Environmental Protection.

58 (7) "Process vessel" means tanks, containers or other
59 vessels utilized in a facility in the manufacturing process
60 through which there is a steady, variable, recurring or
61 intermittent flow of materials. This does not include tanks
62 used for storage of materials prior to their introduction into
63 the production process or for the storage of finished products
64 or by-products of the production process.

65 (8) "Public groundwater supply source" means a primary
66 source of water supply for a public water system which is
67 directly drawn from a well, underground stream, underground
68 reservoir, underground mine or other primary source of water
69 supplies which is found underneath the surface of the state.

70 (9) "Public surface water supply source" means a primary
71 source of water supply for a public water system which is
72 directly drawn from rivers, streams, lakes, ponds,
73 impoundments or other primary sources of water supplies
74 which are found on the surface of the state.

75 (10) "Public surface water influenced groundwater supply
76 source" means a source of water supply from a public water
77 system which is directly drawn from an underground well,
78 underground river or stream, underground reservoir or

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79 underground mine, and the quantity or quality of the water in
80 that underground supply source is heavily influenced, directly
81 or indirectly, by the quantity and quality of surface water in
82 the immediate area.

83 (11) "Public water system" means:

84 (A) Any water supply or system which regularly supplies
85 or offers to supply water for human consumption through
86 pipes or other constructed conveyances, if serving at least an
87 average of twenty-five individuals per day for at least sixty
88 days per year, or which has at least fifteen service
89 connections, and shall include:

90 (i) Any collection, treatment, storage and distribution
91 facilities under the control of the owner or operator of the
92 system and used primarily in connection with the system; and

93 (ii) Any collection or pretreatment storage facilities not
94 under such control which are used primarily in connection
95 with the system.

96 (B) A public water system does not include a system
97 which meets all of the following conditions:

98 (i) Consists only of distribution and storage facilities and
99 does not have any collection and treatment facilities;

100 (ii) Obtains all of its water from, but is not owned or
101 operated by, a public water system which otherwise meets the
102 definition;

103 (iii) Does not sell water to any person; and

104 (iv) Is not a carrier conveying passengers in interstate
105 commerce.

106 (12) "Release" means any spilling, leaking, emitting,
107 discharging, escaping, leaching or disposing of fluids from an
108 aboveground storage tank into groundwater, surface water or
109 subsurface soils. The term shall also include spilling,
110 leaking, emitting, discharging, escaping, leaching or
111 disposing of fluids from an aboveground storage tank into a
112 containment structure or facility that poses an immediate
113 threat of contamination of the soils, subsurface soils, surface
114 water or groundwater: *Provided*, That the overfill or spillage
115 of up to twenty gallons of fluid during the loading or
116 unloading of liquids shall not be required to be reported if the
117 overflow or spillage is wholly contained within a containment
118 structure or facility, it is promptly cleaned up and no portion
119 of the overfill or spillage escapes onto the ground or into
120 adjacent surface water.

121 (13) "Secondary containment" means a safeguard applied
122 to one or more tanks that prevents the discharge into the
123 waters of the state of the entire capacity of the largest single
124 tank and sufficient freeboard to contain precipitation. In
125 order to qualify as secondary containment, the barrier and
126 containment field must be sufficiently impervious to contain
127 fluids in the event of a release, and may include double-
128 walled tanks, dikes, containment curbs, pits or drainage
129 trench enclosures that safely confine the release from a tank
130 in a facility catchment basin or holding pond.

131 (14) "Secretary" means the Secretary of the Department
132 of Environmental Protection, or his or her designee.

133 (15) "Source water protection area" for a public
134 groundwater supply source is the area within an aquifer that
135 supplies water to a public water supply well within a five-
136 year time-of-travel, and is determined by the mathematical
137 calculation of the locations from which a drop of water
138 placed at the edge of the protection area would theoretically
139 take five years to reach the well.

140 (16) "Zone of critical concern" for a public surface water
141 supply is a corridor along streams within a watershed that
142 warrants more detailed scrutiny due to its proximity to the
143 surface water intake and the intake's susceptibility to
144 potential contaminants within that corridor. The zone of
145 critical concern is determined using a mathematical model
146 that accounts for stream flows, gradient and area topography.
147 The length of the zone of critical concern is based on a five-
148 hour time-of-travel of water in the streams to the water
149 intake, plus an additional one-fourth mile below the water
150 intake. The width of the zone of critical concern is one
151 thousand feet measured horizontally from each bank of the
152 principal stream and five hundred feet measured horizontally
153 from each bank of the tributaries draining into the principal
154 stream.

**§22-30-4. Inventory and registration of existing aboveground
storage tanks.**

1 (a) To assure protection of the water resources of the
2 state, the secretary shall compile an inventory of all
3 aboveground storage tanks in existence this state, regardless
4 of whether it is an operational or nonoperational storage tank
5 on the effective date of this article. The secretary shall
6 prescribe an inventory and registration form for this purpose
7 within thirty days of the effective date of the enactment of
8 this article.

9 (b) At a minimum the inventory form shall identify the
10 ownership of the tank, tank location, date of installation if
11 known, type of construction, capacity and age of the tank, the
12 type and volume of fluid stored therein, and the identity of
13 and distance to the nearest groundwater public water supply
14 intake and/or nearest surface water downstream public water
15 supply intake.

16 (c) If the inventoried tank is regulated under any existing
17 state or federal regulatory program, the owner of the tank
18 shall be required to provide the identifying number of any
19 license, registration or permit issued for the tank, and identify
20 the regulatory standards and requirements the tank is required
21 to meet.

22 (d) Any aboveground storage tank placed into service on
23 or after the effective date of this section, but prior to the
24 establishment of a permit program, shall complete and submit
25 an inventory form with the secretary.

26 (e) Upon receipt of an inventory form, the secretary shall
27 determine whether the storage tank is required to meet the
28 minimum design, construction, inspection, secondary
29 containment, leak reporting and performance standards
30 equivalent to or greater than the standards and requirements
31 established under an existing license or permit issued for the
32 individual storage tank, storage tank farm or site on which the
33 storage tank is located.

34 (f) The secretary may charge a reasonable fee to cover the
35 cost of maintaining and overseeing the inventory and
36 registration program. The fee may be set by emergency and
37 legislative rules proposed for promulgation in accordance
38 with the provisions of article three, chapter twenty-nine-a of
39 this code.

40 (g) On and after October 1, 2014, it shall be unlawful for
41 any owner or operator to operate or use an aboveground
42 storage tank subject to this article which has not been
43 properly registered or for which any applicable registration
44 fee has not been paid.

**§22-30-5. Aboveground Storage Tank Regulatory Program;
promulgation of appropriate aboveground tank**

standards; permitting procedures and waiver requirements; rulemaking requirements.

1 (a) The secretary shall promulgate for review and
2 consideration by the West Virginia Legislature legislative
3 rules during the 2015 Regular Session of the West Virginia
4 Legislature, on all matters related to this article.

5 (b) To assure further protection of the water resources of
6 the state, the secretary shall develop a regulatory program for
7 new and existing aboveground storage tanks incorporating
8 nationally recognized tank standards such as those standards
9 developed by the American Petroleum Institute (API), the
10 Steel Tank Institute (STI) or comparable authorities, and
11 taking into account the size, location and contents of the
12 tanks. At a minimum, the program shall include the
13 following:

14 (1) A requirement to submit a verified application for a
15 permit containing information as may be prescribed by the
16 secretary;

17 (2) Performance standards for design, construction,
18 installation, maintenance, corrosion detection and
19 maintenance, release detection and prevention and secondary
20 containment to ensure the structural integrity of the storage
21 tank and the secondary containment;

22 (3) Requirements for maintaining a leak detection system,
23 inventory control systems together with tank testing or a
24 comparable system or method designed to identify releases
25 from aboveground storage tanks in a manner consistent with
26 the protection of human health, safety, water resources and
27 the environment;

28 (4) Requirements for maintaining records of any
29 monitoring or leak detection system, corrosion prevention,
30 inventory control system or tank testing system;

31 (5) Requirements for early detection of releases and
32 immediate reporting of releases;

33 (6) Requirements for developing a corrective action plan
34 to expeditiously respond to any releases;

35 (7) Requirements for the closure of aboveground storage
36 tanks and remediation to prevent future releases of fluids or
37 materials to the state's water resources;

38 (8) Requirements for certification of installation, removal,
39 retrofit, corrosion and other testing and inspection of
40 aboveground storage tanks, leak detection systems and
41 secondary containment by a qualified registered professional
42 engineer regulated and licensed by the State Board of
43 Registration for Professional Engineers, or by an individual
44 certified to perform tank inspections by the American
45 Petroleum Institute, or by a person holding certification under
46 another program approved by the secretary;

47 (9) Requirements for life-cycle management of
48 aboveground storage tanks that include mitigation and
49 corrosion prevention plans that include, but are not limited to:

50 (A) A life-cycle maintenance schedule for the use of
51 protective coatings and or other repair, rehabilitation, and
52 maintenance methods used for the preservation of
53 aboveground storage tanks;

54 (B) A process for ensuring that corrosion prevention and
55 mitigation is carried out according to corrosion prevention

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56 industry standards adopted by the secretary for aboveground
57 storage tanks that includes the use of industry trained and
58 certified:

59 (i) Protective coatings personnel to carry out surface
60 preparation operations and coating application on any type of
61 substrate and or surface, but especially concrete and steel;

62 (ii) Cathodic protection experts for all aspects of
63 corrosion prevention projects requiring knowledge of the
64 design, installation, monitoring or maintenance of a cathodic
65 protection system; and

66 (iii) Inspectors to ensure best practices and standards are
67 adhered to on a corrosion prevention and mitigation project;

68 (C) A plan to prevent environmental degradation that
69 could occur as a result of carrying out corrosion prevention
70 and mitigation including, but not limited to, the careful
71 handling and containment of hazardous materials, not
72 including the contaminant within, removed from the interior
73 and or exterior of an aboveground storage tank; and

74 (D) Use of industry experts for consultation and direct to
75 determine whether to approve a corrosion prevention and
76 mitigation plan, or any part therein, the secretary shall
77 consult, and interact directly with, corrosion industry experts
78 specializing in the training and certification of personnel to
79 carry out corrosion prevention and mitigation methods.

80 (10) The assessment of permit application and
81 registration fees as determined by the secretary;

82 (11) Permit issuance only after the application and any
83 other supporting documents have been submitted, reviewed

84 and approved by the secretary, and that permits may be
85 issued with certain conditions or contingencies;

86 (12) A requirement that any aboveground storage tank
87 maintenance work shall commence within six months from
88 the date the permit was issued and must be completed within
89 one year of commencement. If the work has not started or is
90 not completed during the stated time periods, the permit shall
91 expire and a new permit shall be required unless a written
92 extension is granted by the secretary. An extension may be
93 granted only if the applicant can demonstrate that the delay
94 was not deliberate and that the delay will not present harm to
95 human health, safety, water resources or the environment;

96 (13) A procedure for the administrative resolution of
97 violations including the assessment of administrative civil
98 penalties;

99 (14) A procedure for any person adversely affected by a
100 decision or order of the secretary relating to the aboveground
101 storage tank program to appeal to the Environmental Quality
102 Board, pursuant to the provisions of article one, chapter
103 twenty-two-b of this code;

104 (15) In coordination and cooperation with the Bureau for
105 Public Health and the Division of Homeland Security and
106 Emergency Management, create a process and procedure for
107 identifying any aboveground storage tanks which are located
108 within a defined zone of critical concern for a public water
109 system's surface water intake or within a defined source
110 water protection area for a public water system's groundwater
111 intake, and determining whether additional permit
112 requirements and inspections should be imposed on that tank
113 or facility by requiring the issuance of any new permit
114 pursuant to this article, or by amending any existing permit

115 which may pertain to that tank or facility, under this chapter,
116 or by any other article of this chapter;

117 (16) Requirements for maintaining written or electronic
118 records that log at least the following information for each
119 aboveground storage tank: Tank numbers, additives,
120 verifiable content levels, deliveries, amounts and quantities,
121 dispensing, repairs and maintenance; and including the
122 requirement that such logs be signed by the owner or a
123 designated responsible supervisor, and be available for
124 inspection upon request of the secretary; and

125 (17) Compliance with a nationally recognized tank
126 standard as solely determined by the department, shall be
127 deemed compliance with the requirements that are developed
128 in accordance with subsection (9) of this section.

§22-30-6. Annual inspection and certification.

1 (a) Every owner or operator of an aboveground storage
2 tank regulated herein shall have an annual inspection of each
3 tank performed by a qualified registered professional
4 engineer or a qualified person working under the direct
5 supervision of a registered professional engineer, regulated
6 and licensed by the State Board of Registration for
7 Professional Engineers, or by an individual certified to
8 perform tank inspections by the American Petroleum
9 Institute, or by a person holding certification under another
10 program approved by the secretary. Every owner or operator
11 shall submit, on a form prescribed by the secretary, a
12 certification from the engineer that each tank, associated
13 equipment, leak detection system and secondary containment
14 structure meets the minimum standards established by this
15 article or by the secretary by rule.

16 (b) The certification form shall be submitted to the
17 secretary on or before January 1, 2015, and each year
18 thereafter.

§22-30-7. Financial responsibility.

1 The secretary shall promulgate rules requiring owners
2 and operators to provide evidence of adequate financial
3 resources to undertake reasonable corrective action for
4 releases of fluid from aboveground storage tanks. The means
5 of demonstrating adequate financial responsibility may
6 include, but not be limited to, providing evidence of current
7 insurance, guarantee, surety bond, letter of credit, proof of
8 assets, trust fund or qualification as a self insurer.

§22-30-8. Corrective action.

1 (a) Prior to the effective date of the emergency and
2 legislative rules promulgated pursuant to the authority
3 granted under this article, the secretary is authorized to:

4 (1) Require the owner or operator to develop a
5 preliminary corrective action plan taking into consideration
6 the types of fluids and types of tanks on the premises;

7 (2) Require the owner or operator of an aboveground
8 storage tank to undertake prompt corrective action to protect
9 human health, safety, water resources or the environment
10 from contamination caused by a release; or

11 (3) Undertake immediate corrective action with respect
12 to any release or threatened release of fluid from an
13 aboveground storage tank when, in the judgment of the
14 secretary, the action is necessary to protect human health,
15 safety, water resources or the environment from
16 contamination caused by a release.

17 (b) The corrective action undertaken or required by this
18 section shall be what may be necessary to protect human
19 health, water resources and the environment from
20 contamination caused by a release, including the ordered
21 cessation or closure of a source of contamination and the
22 ordered remediation of a contaminated site. The secretary
23 shall use funds in the Protect Our Water Fund established
24 pursuant to this article for payment of costs incurred for
25 corrective action taken by the secretary in accordance with
26 this article. In undertaking corrective actions under this
27 section and in issuing orders requiring owners or operators to
28 undertake the actions, the secretary shall give priority to
29 releases or threatened releases of fluid from aboveground
30 storage tanks that pose the greatest threat to human health,
31 water resources or the environment.

32 (c) Following the effective date of rules promulgated
33 pursuant to this article, all actions or orders of the secretary
34 shall be in conformity with those rules. Following the
35 effective date of the rules, the secretary may undertake
36 corrective action with respect to any release or threatened
37 release of fluid from an aboveground storage tank only if, in
38 the judgment of the secretary, the action is necessary to
39 protect human health, safety, water resources or the
40 environment from contamination, and one or more of the
41 following situations exists:

42 (1) If no person can be found within thirty days, or a
43 shorter period as may be necessary to protect human health,
44 safety, water resources and the environment, who is an owner
45 or operator of the aboveground storage tank at issue and who
46 is capable of carrying out the corrective action properly;

47 (2) A situation exists that requires immediate action by
48 the secretary under this section to protect human health,
49 safety, water resources or the environment;

50 (3) The cost of corrective action to be expended on an
51 aboveground storage tank exceeds the amount of resources
52 that the owner or operator can reasonably be expected to
53 possess based on the information required to be submitted
54 pursuant to this article and, considering the fluid being stored
55 in the aboveground storage tank in question, expenditures
56 from the Protect Our Water Fund are necessary to assure an
57 effective corrective action; or

58 (4) The owner or operator of the tank has failed or
59 refused to comply with an order of the secretary under this
60 article or of the Environmental Quality Board under article
61 one, chapter twenty-two-b of this code to comply with
62 appropriate corrective action measures ordered by the
63 secretary or the Environmental Quality Board.

64 (d) The secretary may draw upon the Protect Our Water
65 Fund in order to take action under subdivision (1) or (2),
66 subsection (c) of this section if the secretary has made
67 diligent good-faith efforts to determine the identity of the
68 owner or operator responsible for the release or threatened
69 release and:

70 (1) The secretary is unable to determine the identity of
71 the owner or operator in a manner consistent with the need to
72 take timely corrective action; or

73 (2) The owner or operator determined by the secretary to
74 be responsible for the release or threatened release has been
75 informed in writing of the secretary's determination and has
76 been requested by the secretary to take appropriate corrective
77 action but is unable or unwilling to take proper action in a
78 timely manner.

79 (e) The written notice to the owner or operator must
80 inform the owner or operator that if it is subsequently found

81 liable for releases pursuant to this section, the owner or
82 operator will be required to reimburse the Protect Our Water
83 Fund for the costs of the investigation, information gathering
84 and corrective action taken by the secretary.

85 (f) If the secretary determines that immediate response to
86 an imminent threat to human health, safety, water resources
87 or the environment is necessary to avoid substantial injury or
88 damage thereto, corrective action may be taken pursuant to
89 this section without the prior written notice required by
90 subdivision (2), subsection (d) of this section. In that case,
91 the secretary must give subsequent written notice to the
92 owner or operator within fifteen days after the action is taken
93 describing the circumstances that required the action to be
94 taken and setting forth the matters identified in subsection (e)
95 of this section.

§22-30-9. Spill prevention response plan.

1 (a) Within one hundred eighty days of the effective date
2 of this article, each owner or operator of an aboveground
3 storage tank shall submit a spill prevention response plan for
4 each aboveground storage tank. Owners and operators of
5 aboveground storage tanks shall file updated plans required
6 to be submitted by this section no less frequently than every
7 three years. Each plan shall be site-specific, consistent with
8 the requirements of this article, and developed in consultation
9 with Bureau for Public Health, county and municipal
10 emergency management agencies. The spill prevention
11 response plan shall at a minimum:

12 (1) Identify and describe the activity that occurs at the
13 site and identify applicable hazard and process information,
14 including a specific listing and inventory of all types of fluids
15 stored, amount of fluids stored and wastes generated that are
16 stored in aboveground storage tanks at the facility. The plan

17 shall include the material safety data sheets (MSDS) required
18 by the Occupational Safety and Health Administration for all
19 fluids in use or stored in aboveground storage tanks at the
20 facility. The material safety data sheets must include the
21 health hazard number identified by the National Fire
22 Protection Association. The plan shall also include drawings
23 of the aboveground storage tank facility, including the
24 locations of all drainage pipes and water outlets;

25 (2) Identify all facility-related positions with duties and
26 responsibilities for developing, implementing and
27 maintaining the facility's plan. The plan shall describe in
28 detail the chain of command at the aboveground storage tank
29 facility and list all facility emergency coordinators and all
30 known emergency response contractors;

31 (3) Provide a preventive maintenance program that
32 includes monitoring and inspection procedures, including
33 identification of stress points, employee training programs
34 and security systems. The plan shall include a description of
35 potential sources and areas where spills and leaks may occur
36 by drawings and plot plans and shall identify specific spill
37 prevention measures for those identified areas;

38 (4) Detail the specific response that the aboveground
39 storage tank facility and contract emergency personnel shall
40 take upon the occurrence of any release of fluids from an
41 aboveground storage tank at the facility;

42 (5) Provide contact information obtained by the owner or
43 operator of the aboveground storage tanks from the county
44 and municipal emergency management agencies and the
45 nearest downstream public water supply intake, and designate
46 the person or persons to be notified in the event of a release
47 from an aboveground storage tank; and

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48 (6) Provide the secretary with all other requested
49 information.

50 (b) Each owner of an aboveground storage tank with an
51 approved spill prevention response plan shall submit to the
52 secretary a revised plan or addendum to the plan in
53 accordance with the requirements of this article if any of the
54 following occur:

55 (1) There is a substantial modification in design,
56 construction, operation or maintenance of any aboveground
57 storage tank or associated equipment, or there are other
58 circumstances that increase the potential for fires, explosions
59 or releases of fluids;

60 (2) There is a substantial modification in emergency
61 equipment at the facility;

62 (3) There are substantial changes in emergency response
63 protocols at the aboveground storage tank facility;

64 (4) The plan fails in an emergency;

65 (5) The removal or the addition of any aboveground
66 storage tank; or

67 (6) Other circumstances occur about which the secretary
68 requests an update.

69 (c) The secretary shall approve the spill prevention
70 response plan or reject the plan and require modifications as
71 may be necessary and reasonable to assure the protection of
72 the source water of a public water system from a release of
73 fluids from an aboveground storage tank. If rejected, the
74 owner of the aboveground storage tank shall submit a revised
75 plan to the secretary for approval within thirty days of receipt

76 of notification of the secretary's decision. Failure to comply
77 with a plan approved by the secretary pursuant to this section
78 is a violation of this article.

79 (d) Nothing contained in this section relieves the owner
80 or operator of an aboveground storage tank from his or her
81 obligation to report any release immediately to the
82 department's emergency notification telephone number.

§22-30-10. Notice to local governments and water companies.

1 The owner or operator of an aboveground storage tank
2 facility shall provide as required by the secretary public
3 notice to any public water system where the facility is located
4 within the system's identified groundwater supply's source
5 water protection area or within the system's surface water
6 supply's zone of critical protection, to the local municipality,
7 if any, and to the county in which the facility is located. The
8 notice shall provide a detailed inventory of the type and
9 quantity of fluid stored in aboveground storage tanks at the
10 facility and the material safety data sheets (MSDS) associated
11 with the fluid in storage. The owner or operator shall also
12 provide as required by the secretary a copy of the spill
13 prevention response plan and any updates thereto, which
14 have been approved by the secretary pursuant to this act, to
15 the applicable public water systems and county and municipal
16 emergency management agencies.

§22-30-11. Required signage.

1 Every aboveground storage tank shall display the
2 signage, if any, required by the Occupational Safety and
3 Health Administration; the tank registration number, when
4 issued by the secretary; and the emergency contact number
5 for the owner or operator of the tank and the emergency
6 contact number for the Department of Environmental

7 Protection's Spill Reporting Hotline. For the purposes of this
8 section, the requirements for prominently posted signage
9 shall be specified in the rules proposed for promulgation by
10 the secretary pursuant to this article and article three, chapter
11 twenty-nine-a of this code.

§22-30-12. Aboveground Storage Tank Administrative Fund.

1 (a) The secretary shall collect annual registration fees
2 from owners or operators of each aboveground storage tank
3 in an amount to be promulgated in the legislative rules
4 authorized by this article to be used by the secretary to defray
5 the costs of administering this article. All registration and
6 permit fees and the net proceeds of all fines, penalties and
7 forfeitures collected under this article, including accrued
8 interest, shall be paid into a special revenue account, hereby
9 created within the State Treasury, designated the
10 Aboveground Storage Tank Administrative Fund.

11 (b) At the end of each fiscal year, any unexpended
12 balance, including accrued interest, on deposit in the
13 Aboveground Storage Tank Administrative Fund shall not be
14 transferred to the General Revenue Fund, but shall remain in
15 the Aboveground Storage Tank Administrative Fund for
16 expenditure pursuant to this section.

§22-30-13. Protect Our Water Fund.

1 (a) Each owner or operator of an aboveground storage
2 tank located in this state shall pay an annual fee to establish
3 a fund to assure adequate response to leaking aboveground
4 storage tanks. The amount of fees assessed pursuant to this
5 section shall be set forth by rule. The fees must be sufficient
6 to cover the regulatory oversight and services to be provided
7 by designated agencies, including necessary technical and
8 administrative personnel. The proceeds of the assessment

9 shall be paid into a special revenue account, hereby created
10 within the State Treasury, designated the Protect Our Water
11 Fund. The fund shall be administered by the secretary.
12 Expenditures from the fund shall be solely to respond to
13 leaking aboveground storage tanks, and are not authorized
14 from collections but are to be made only in accordance with
15 appropriation by the Legislature and in accordance with the
16 provisions of article three, chapter twelve of this code and
17 upon the fulfillment of the provisions set forth in article two,
18 chapter eleven-b of this code: *Provided*, That for the fiscal
19 years ending June 30, 2014 and 2015, expenditures are
20 authorized from collections rather than pursuant to an explicit
21 appropriation by the Legislature. At the end of each fiscal
22 year, any unexpended balance, including accrued interest, on
23 deposit in the Protect Our Water Fund shall not be transferred
24 to the General Revenue Fund, but shall remain in the Protect
25 Our Water Fund for expenditure pursuant to this section.

26 (b) Each owner or operator of an aboveground storage
27 tank subject to a fee assessment under subsection (a) of this
28 section shall pay a fee based on the number of aboveground
29 storage tanks he or she owns or operates, as applicable. The
30 secretary shall vary the fees annually to a level necessary to
31 produce a sufficient fund at the beginning of each calendar
32 year.

33 (c) At the end of each fiscal year, any unexpended
34 balance, including accrued interest, on deposit in the Protect
35 Our Water Fund shall not be transferred to the General
36 Revenue Fund, but shall remain in the Protect Our Water
37 Fund.

38 (d) The secretary may enter into agreements and contracts
39 and to expend the moneys in the fund for the following
40 purposes:

41 (1) Responding to aboveground storage tank releases
42 when, based on readily available information, the secretary
43 determines that immediate action is necessary to prevent or
44 mitigate significant risk of harm to human health, safety,
45 water resources or the environment from contamination
46 caused by a release of fluid from aboveground storage tanks
47 in situations for which no federal funds are immediately
48 available for the response, cleanup or containment: *Provided,*
49 That the secretary shall apply for and diligently pursue all
50 available federal funds at the earliest possible time;

51 (2) Reimbursing any nonresponsible parties for
52 reasonable cleanup costs incurred with the authorization of
53 the secretary in responding to an aboveground storage tank
54 release; or

55 (3) Reimbursing any nonresponsible parties for
56 reasonable costs incurred with the authorization of the
57 secretary responding to perceived, potential or threatened
58 releases from aboveground storage tanks.

59 (e) The secretary, through a cooperative agreement with
60 another state regulatory agency, in this or another state, may
61 use the fund to compensate the cooperating agency for
62 expenses the cooperating agency incurs in carrying out
63 regulatory responsibilities that agency may have pursuant to
64 this article.

§22-30-14. Public access to information.

1 (a) The public shall have access to all documents and
2 information submitted to the agency, subject to the limitations
3 contained in the state Freedom of Information Act, article
4 one, chapter twenty-nine-b of this code. Records, reports or
5 information obtained from any persons under this article may
6 be disclosed to other officers, employees or authorized

7 representatives of this state or federal agency implementing
8 the provisions of this article or any other applicable law
9 related to releases of fluid from aboveground storage tanks
10 that impact the state's water resources.

11 (b) A list of the potential sources of significant
12 contamination contained within the zone of critical concern
13 as provided by the Department of Environmental Protection,
14 the Bureau for Public Health and the Division of Homeland
15 Security and Emergency Management may be disclosed. The
16 exact location of the contaminants within the zone of critical
17 concern is not subject to public disclosure in response to a
18 Freedom of Information Act request under article one,
19 chapter twenty-nine-b of this code. However, the location,
20 characteristics and approximate quantities of potential
21 sources of significant contamination within the zone of
22 critical concern shall be made known to one or more
23 designees of the public water utility, and shall be maintained
24 in a confidential manner by the public water utility. In the
25 event of a chemical spill, release or related emergency,
26 information pertaining to any spill or release of contaminant
27 shall be immediately disseminated to any emergency
28 responders responding to the site of a spill or release, and the
29 general public shall be promptly notified in the event of a
30 chemical spill, release or related emergency.

§22-30-15. Inspections, monitoring and testing.

1 (a) For the purposes of developing or assisting in the
2 development of any rule, conducting any study, taking any
3 corrective action or enforcing any provision of this article,
4 any owner or operator of an aboveground storage tank shall,
5 upon request of the secretary:

6 (1) Furnish information relating to the aboveground
7 storage tanks, their associated equipment and contents;

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8 (2) Conduct reasonable monitoring or testing;

9 (3) Permit the secretary, at all reasonable times, to inspect
10 and copy records relating to aboveground storage tanks; and

11 (4) Permit the secretary to have access to the
12 aboveground storage tanks for corrective action.

13 (b) For the purposes of developing or assisting in the
14 development of any rule, conducting any study, taking
15 corrective action or enforcing any provision of this article,
16 the secretary may:

17 (1) Enter at any time any establishment or other place
18 where an aboveground storage tank is located;

19 (2) Inspect and obtain samples of any fluid contained in
20 an aboveground storage tank from any person;

21 (3) Conduct monitoring or testing of the aboveground
22 storage tanks, associated equipment, contents or surrounding
23 soils, surface water or groundwater; and

24 (4) Take corrective action as specified in this article.

25 (c) Each inspection shall be commenced and completed
26 with reasonable promptness.

27 (d) To ensure protection of the water resources of the
28 state and compliance with any provision of this article or rule
29 promulgated thereunder, the secretary shall inspect at least
30 annually any aboveground storage tank facility located within
31 the zone of critical concern of a public water system with a
32 public surface water supply source or a public surface water
33 influenced groundwater supply source.

§22-30-16. Administrative orders; injunctive relief.

1 (a) When the secretary determines, on the basis of any
2 information, that a person is in violation of any requirement
3 of this article or the rules promulgated thereunder, the
4 secretary may issue an order stating with reasonable
5 specificity the nature of the violation and requiring
6 compliance within a reasonable specified time period, or the
7 secretary may commence a civil action in the circuit court of
8 the county in which the violation occurred or in the circuit
9 court of Kanawha County for appropriate relief, including a
10 temporary or permanent injunction. The secretary may,
11 except as provided in subsection (b) of this section, stay any
12 order he or she issues upon application, until the order is
13 reviewed by the Environmental Quality Board.

14 (b) In addition to the powers and authority granted to
15 secretary by this chapter to enter into consent agreements,
16 settlements, and otherwise enforce this chapter, the secretary
17 shall propose rules for legislative approval to establish a
18 mechanism for the administrative resolution of violations set
19 forth in this article through consent order or agreement as an
20 alternative to instituting a civil action.

§22-30-17. Civil and criminal penalties.

1 (a) Any person who fails to comply with an order of the
2 secretary issued under subsection (a), section sixteen of this
3 article within the time specified in the order is liable for a
4 civil penalty of not more than \$25,000 for each day of
5 continued noncompliance.

6 (b) Any owner or operator of an aboveground storage
7 tank who knowingly fails to register or obtain a permit
8 required by this article for an aboveground storage tank or
9 submits false information pursuant to this article is liable for

10 a civil penalty not to exceed \$10,000 for each aboveground
11 storage tank that is not registered or permitted or for which
12 false information is submitted.

13 (c) Any owner or operator of an aboveground storage
14 tank who fails to comply with any requirement of this article
15 or any standard promulgated by the secretary pursuant to this
16 article is subject to a civil penalty not to exceed \$10,000 for
17 each day of violation.

18 (d) Any person who knowingly and intentionally violates
19 any provision of this article shall be guilty of a misdemeanor,
20 and, upon conviction thereof, shall be confined in a regional
21 jail for a period of time not exceeding one year, and be fined
22 an amount not to exceed \$25,000.

23 (e) Any person convicted of a second or subsequent
24 willful violation of subsection (d) of this section or
25 knowingly and willfully violates any provision of any permit,
26 rule or order issued under or subject to the provisions of this
27 article is guilty of a felony and, upon conviction, shall be
28 imprisoned in a correctional facility not less than one nor
29 more than three years, or fined not more than \$50,000 for
30 each day of violation, or both fined and imprisoned.

31 (f) Any person may be prosecuted and convicted under
32 the provisions of this section notwithstanding that none of the
33 administrative remedies provided in this article have been
34 pursued or invoked against said person and notwithstanding
35 that civil action for the imposition and collection of a civil
36 penalty or an application for an injunction under the
37 provisions of this article has not been filed against such
38 person.

39 (g) Where a person holding a permit is carrying out a
40 program of pollution abatement or remedial action in

41 compliance with the conditions and terms of the permit, the
42 person is not subject to criminal prosecution for pollution
43 recognized and authorized by the permit.

44 (h) Civil penalties are payable to the secretary. All
45 moneys collected under this section for civil fines collected
46 under this article shall be deposited into a restricted account
47 known as the Protect Our Water Fund. All money deposited
48 into this account shall be used by the secretary solely to
49 respond to leaking aboveground storage tanks.

§22-30-18. Appeal to Environmental Quality Board.

1 Any person aggrieved or adversely affected by an order
2 of the secretary made and entered in accordance with the
3 provisions of this article may appeal to the Environmental
4 Quality Board, pursuant to the provisions of article one,
5 chapter twenty-two-b of this code.

§22-30-19. Duplicative enforcement prohibited.

1 No enforcement proceeding brought pursuant to this
2 article may be duplicated by an enforcement proceeding
3 subsequently commenced under some other article of this
4 code with respect to the same transaction or event, unless the
5 subsequent proceeding involves the violation of a permit or
6 permitting requirement of other article.

§22-30-20. Reporting and accountability.

1 (a) Every year, the secretary shall submit a report to the
2 Joint Legislative Oversight Commission on State Water
3 Resources and the Joint Committee on Government and
4 Finance which assesses the effectiveness of this article and
5 provides other information as may be requested by the
6 commission to allow it to assess the effectiveness of this

7 article, including, without limitation, the secretary's
8 observations concerning all aspects of compliance with this
9 article and any legislative rules promulgated pursuant hereto,
10 the regulatory process, and any pertinent changes to federal
11 rules or regulations.

12 (b) The secretary shall keep accurate accounts of all
13 receipts and disbursements related to the administration of the
14 Aboveground Storage Tank Administrative Fund and shall
15 make a detailed annual report to the Joint Legislative
16 Oversight Commission on State Water Resources and the
17 Joint Committee on Government and Finance addressing the
18 administration of the fund.

19 (c) The secretary shall keep accurate accounts of all
20 receipts and disbursements related to the administration of the
21 Protect Our Water Fund and shall make a specific annual
22 report to the Joint Legislative Oversight Commission on State
23 Water Resources and the Joint Committee on Government
24 and Finance addressing the administration of the fund.

§22-30-21. Interagency cooperation.

1 (a) In implementation of this article, the secretary shall
2 coordinate with the Department of Health and Human
3 Resources, the West Virginia Public Service Commission, the
4 Division of Homeland Security and Emergency Management
5 and local health departments to ensure the successful
6 planning and implementation of this act, including
7 consideration of the role of those agencies in providing
8 services to owners and operators of aboveground storage
9 tanks and public water systems.

10 (b) The secretary shall also coordinate with state and
11 local emergency response agencies to prepare and issue
12 appropriate emergency response plans to facilitate a

13 coordinated emergency response and incident command and
14 communication between the owner or operator of the
15 aboveground storage tank, the state and local emergency
16 response agencies and the affected public water system.

17 (c) The secretary shall also coordinate with the State Fire
18 Marshal in addressing the periodic inspection of local fire
19 departments to include a requirement for inspectors to
20 examine and identify the status of National Incident
21 Management System fire department personnel training.

§22-30-22. Imminent and substantial danger.

1 (a) Notwithstanding any other provision of this chapter to
2 the contrary, upon receipt of evidence that an aboveground
3 storage tank may present an imminent and substantial danger
4 to human health, water resources or the environment, the
5 secretary may bring suit on behalf of the State of West
6 Virginia in the Circuit Court of Kanawha County against any
7 owner or operator of an aboveground storage tank who has
8 contributed or who is contributing to imminent and
9 substantial danger to public health, safety, water resources or
10 the environment to order the person to take action as may be
11 necessary to abate the situation and protect human health,
12 safety, water resources and the environment from
13 contamination caused by a release of fluid from an
14 aboveground storage tank.

15 (b) Upon receipt of information that there is any
16 aboveground storage tank that presents an imminent and
17 substantial danger to human health, safety, water resources or
18 the environment, the secretary shall provide immediate notice
19 to the appropriate state and local government agencies and
20 any affected public water system. In addition, the secretary
21 shall require notice of any danger to be promptly posted at

22 the aboveground storage tank facility containing the
23 aboveground storage tank at issue.

§22-30-23. Promulgation of rules.

1 The secretary shall promulgate emergency and legislative
2 rules as necessary to implement the provisions of this article
3 in accordance with the provisions of article three, chapter
4 twenty-nine-a of this code.

§22-30-24. Powers and duties of secretary.

1 (a) In addition to the powers and duties prescribed in this
2 chapter or otherwise provided by law, the secretary has the
3 exclusive authority to perform all acts necessary to
4 implement this article.

5 (b) The secretary may receive and expend money from
6 the federal government or any other sources to implement
7 this article.

8 (c) The secretary may revoke any registration,
9 authorization or permit for a violation of this article or the
10 rules promulgated hereunder

11 (d) The secretary may issue orders, assess civil penalties,
12 institute enforcement proceedings and prosecute violations of
13 this article as necessary.

14 (e) The secretary, in accordance with this article, may
15 order corrective action to be undertaken, take corrective
16 action or authorize a third party to take corrective action.

17 (f) The secretary may recover the costs of taking
18 corrective action, including costs associated with authorizing
19 third parties to perform corrective action. Costs may not

20 include routine inspection and administrative activities not
21 associated with a release.

§22-30-25. Scope of article; waiving additional permitting requirements for certain categories of aboveground storage tanks; establishing a process for granting waivers for additional categories of ground storage tanks, by legislative rule, upon verification that the category of tanks are regulated under comparable or more rigorous protective state or federal standards.

1 (a) While all aboveground storage tanks shall be required
2 to participate in the inventory and registration process set
3 forth in section four of this article, the following categories
4 of containers and tanks shall not be required to be permitted
5 under section five of this article, either because they do not
6 represent a substantial threat of contamination, or they are
7 currently regulated under standards which meet or exceed the
8 protective standards and requirements set forth in this article:

9 (1) An aboveground storage tank containing drinking
10 water, filtered surface water, demineralized water, noncontact
11 cooling water or water stored for fire or emergency purposes;

12 (2) Any natural gas or propane tanks regulated under
13 NFPA 58-30A or NFPA 58-30B;

14 (3) Septic tanks and home aeration systems;

15 (4) A pipeline facility, including gathering lines,
16 regulated under the Natural Gas Pipeline Safety Act of 1968
17 or the Hazardous Liquid Pipeline Safety Act of 1979, or an
18 intrastate pipeline facility regulated by the West Virginia
19 Public Service Commission or otherwise regulated under any
20 state law comparable to the provisions of either the Natural

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21 Gas Pipeline Safety Act of 1968 or the Hazardous Liquid
22 Pipeline Safety Act of 1979;

23 (5) Equipment or machinery containing substances for
24 operational purposes, including integral hydraulic lift tanks,
25 lubricating oil reservoirs for pumps and motors, electrical
26 equipment and heating and cooling equipment;

27 (6) A mobile tank, truck or rail car that is located on a site
28 for less than sixty consecutive calendar days;

29 (7) Liquid traps or associated gathering lines related to oil
30 or gas production and gathering operations;

31 (8) A surface impoundment, pit, pond or lagoon;

32 (9) Aboveground storage tanks for which spill
33 prevention, control, and countermeasure plans are required by
34 the Environmental Protection Agency (EPA) under 40 CFR
35 Part 112 (oil pollution prevention), unless located within a
36 zone of critical protection.

37 (b) The Department of Environmental Protection may
38 designate, by legislative rule, additional categories of
39 aboveground storage tanks for which an individual
40 aboveground storage tank permit may be waived, after
41 confirming that the tank is regulated under an existing state
42 or federal regulatory permit or enforceable standard which
43 includes, but is not limited to, the following:

44 (1) Secondary containment with an impermeable base,
45 which is sufficient to fully contain the contents of the tank or
46 the contents of the largest tank in the group of tanks in the
47 event of a leak from spilling out onto the ground or adjacent
48 surface water;

49 (2) Spill prevention, leak detection and control and
50 inspection requirements which meet or exceed the standards
51 established by the article or by rules promulgated thereunder;

52 (3) Regular inspections and routine integrity testing
53 requirements which are equally protective to the requirements
54 established pursuant to this article or any rules promulgated
55 thereunder; and

56 (4) Emergency response and notification requirements
57 which are at least as prompt and comprehensive as the
58 emergency response and notification requirements
59 established by this article or any rules promulgated
60 thereunder.

61 (c) In lieu of requiring a separate permit issued under this
62 section, the secretary may adopt rules that would allow the
63 requirements of this article to be incorporated into, and
64 enforced through, the state-only portion of a National
65 Pollutant Discharge Elimination System (NPDES) permit or
66 a permit under article six or six-a of this chapter.

67 (d) If the aboveground storage tank or tanks' location is
68 to be regulated pursuant to a general NPDES permit or an
69 individual NPDES permit, the secondary containment, spill
70 prevention, leak detection and control requirements,
71 inspection requirements, reporting requirements and routine
72 integrity testing requirements for that tank or tanks are to be
73 specifically set forth as enforceable permit conditions and
74 requirements.

ARTICLE 31. THE PUBLIC WATER SUPPLY PROTECTION ACT.

§22-31-1. Short title.

1 This article may be known and cited as the Public Water
2 Supply Protection Act.

§22-31-2. Legislative findings.

1 (a) The West Virginia Legislature finds that it is in the
2 public policy of the State of West Virginia to protect and
3 conserve the water resources which are relied upon by the
4 state and its citizens. The state's water resources are vital
5 natural resources that are essential to maintain, preserve and
6 promote human health, quality of life and economic vitality
7 of the state.

8 (b) The West Virginia Legislature further finds that it is
9 the public policy of the state that clean, uncontaminated water
10 be available for its citizens who are dependent on clean water
11 as a basic need for survival, and who rely on the assurances
12 from public water systems and the government that the water
13 is safe to consume.

14 (c) The West Virginia Legislature further finds that it is
15 the public policy of the state that clean, uncontaminated water
16 be available to its businesses and industries that rely on water
17 for their economic survival, and the well-being of their
18 employees. These include hospitals and the medical industry,
19 schools and educational institutions, the food and hospitality
20 industries, the tourism industry, manufacturing, coal, natural
21 gas and other industries. Businesses and industries searching
22 for places to locate or relocate consider the quality of life for
23 their employees as well as the quality of the raw materials
24 such as clean water.

25 (d) The Legislature further finds that large quantities of
26 fluids are stored in aboveground storage tanks, below ground
27 storage tanks, in impoundments and other locations which
28 pose a threat of potential contamination to surface waters and

29 groundwaters which are relied upon as primary sources of
30 public water supplies in the state. Emergency situations
31 involving these fluids can and will arise that may present a
32 hazard to human health, safety, the water resources, the
33 environment and the economy of the state.

34 (e) It is important that the public water systems, the
35 responding emergency providers and regulatory inspectors
36 and personnel require complete and accurate information
37 regarding the volume, identity, characteristics and qualities
38 of each potential source of significant contamination to
39 efficiently and accurately anticipate and respond to any
40 associated threat to the public posed by a leak or spill event.

41 (f) The Legislature also finds it reasonable and
42 appropriate to impose additional regulatory oversight and
43 reporting requirements for potential contaminants which are
44 in close proximity to a public water intake, due to the sudden
45 and devastating impact that potential contaminants in that
46 zone pose to a public water system's critical source of supply.

§22-31-3. Definitions.

1 For the purposes of this article:

2 (1) "Potential source of significant contamination" means
3 a facility or activity that stores, uses or produces compounds
4 with potential for significant contaminating impact if released
5 into the source water of a public water supply.

6 (2) "Public water system" means:

7 (A) Any water supply or system which regularly supplies
8 or offers to supply water for human consumption through
9 pipes or other constructed conveyances, if serving at least an
10 average of twenty-five individuals per day for at least sixty

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11 days per year, or which has at least fifteen service
12 connections, and shall include:

13 (i) Any collection, treatment, storage and distribution
14 facilities under the control of the owner or operator of the
15 system and used primarily in connection with the system; and

16 (ii) Any collection or pretreatment storage facilities not
17 under such control which are used primarily in connection
18 with the system.

19 (B) A public water system does not include a system
20 which meets all of the following conditions:

21 (i) Consists only of distribution and storage facilities and
22 does not have any collection and treatment facilities;

23 (ii) Obtains all of its water from, but is not owned or
24 operated by, a public water system which otherwise meets the
25 definition;

26 (iii) Does not sell water to any person; and

27 (iv) Is not a carrier conveying passengers in interstate
28 commerce.

29 (4) "Public groundwater supply source" means a primary
30 source of water supply for a public water system which is
31 directly drawn from a well, underground stream, underground
32 reservoir, underground mine or other primary source of water
33 supplies which is found underneath the surface of the state.

34 (5) "Public surface water supply source" means a primary
35 source of water supply for a public water system which is
36 directly drawn from rivers, streams, lakes, ponds,

37 impoundments or other primary sources of water supplies
38 which are found on the surface of the state.

39 (6) "Public surface water influenced groundwater supply
40 source" means a source of water supply from a public water
41 system which is directly drawn from an underground well,
42 underground river or stream, underground reservoir or
43 underground mine, and the quantity and quality of the water
44 in that underground supply source is heavily influenced,
45 directly or indirectly, by the quantity and quality of surface
46 water in the immediate area.

47 (7) "Zone of critical concern" for a public surface water
48 supply is a corridor along streams within a watershed that
49 warrants more detailed scrutiny due to its proximity to the
50 surface water intake and the intake's susceptibility to
51 potential contaminants within that corridor. The zone of
52 critical concern is determined using a mathematical model
53 that accounts for stream flows, gradient and area topography.
54 The length of the zone of critical concern is based on a five-
55 hour time of travel of water in the streams to the water intake,
56 plus an additional one-fourth mile below the water intake.
57 The width of the zone of critical concern is one thousand feet
58 measured horizontally from each bank of the principal stream
59 and five hundred feet measured horizontally from each bank
60 of the tributaries draining into the principal stream.

**§22-31-4. Inventory of potential sources of significant
contamination in a zone of critical concern;
registration; permitting; notice.**

1 (a) To assure protection of the water resources of the
2 state, the secretary, working in collaboration with the Bureau
3 for Public Health and the Division of Homeland Security and
4 Emergency Management, shall compile an inventory of all
5 potential sources of significant contamination contained

6 within a public water system's zone of critical concern for all
7 public water systems whose source of supply is obtained
8 from a surface water supply source or a surface water
9 influenced groundwater supply source.

10 (b) If the secretary shall determine that a designated
11 potential significant source of contamination is not currently
12 permitted and subject to regulation by the secretary under one
13 or more articles of this chapter, and the secretary determines
14 that the public interest in protecting the public drinking
15 waters of the state warrant additional regulation and
16 inspection of the site to protect the public interests, the
17 secretary may require the owner and operator of that facility
18 to register and obtain a permit for its location pursuant to the
19 provisions of this article.

20 (c) Within sixty days of the date receiving notice from the
21 secretary of the facility's obligation to register pursuant to
22 this article, the owner or operator shall register the location
23 pursuant to the provisions of this section.

24 (d) The secretary shall prescribe a registration form for
25 this purpose within thirty days of the effective date of the
26 enactment of this article. Any potential significant sources of
27 contamination within a public water system's defined zone of
28 critical concern which are required to register with the
29 Department of Environmental Protection pursuant to this
30 section shall do so within sixty days from the receiving notice
31 of their obligation to register.

32 (e) Any potential source of significant contamination
33 placed into service on and after the effective date of this
34 section, but prior to the establishment of a permit program,
35 may be required to register by the secretary at any time.

36 (f) The secretary may charge a reasonable fee to cover the
37 cost of the registration and permitting program. The fee may
38 be set by emergency and legislative rules proposed for
39 promulgation in accordance with the provisions of article
40 three, chapter twenty-nine-a of this code.

§22-31-5. Promulgation of rules.

1 The secretary shall promulgate emergency and legislative
2 rules as necessary to implement the provisions of this article
3 in accordance with the provisions of article three, chapter
4 twenty-nine-a of this code.

§22-31-6. Powers and duties of secretary.

1 (a) In addition to the powers and duties prescribed in this
2 chapter or otherwise provided by law, the secretary has the
3 exclusive authority to perform all acts necessary to
4 implement this article.

5 (b) The secretary is authorized to utilize his or her
6 authority under the West Virginia Water Pollution Control
7 Act to require appropriate permitting and any other
8 conditions or limitations to assure protection of water intakes
9 in zones of critical concern.

10 (c) The secretary may receive and expend money from
11 the federal government or any other sources to implement
12 this article.

13 (d) The secretary may revoke any registration,
14 authorization or permit for a violation of this article or the
15 rules promulgated hereunder.

16 (e) The secretary may issue orders, assess civil penalties,
17 institute enforcement proceedings and prosecute violations of
18 this article as necessary.

19 (f) The secretary, in accordance with this article, may
20 order corrective action to be undertaken, take corrective
21 action or authorize a third party to take corrective action.

22 (g) The secretary may recover the costs of taking
23 corrective action, including costs associated with authorizing
24 third parties to perform corrective action. Costs may not
25 include routine inspection and administrative activities not
26 associated with a release.

§22-31-7. Public access to information.

1 (a) Subject to the exemptions listed in section four, article
2 one, chapter twenty-nine-b of this code, the public shall have
3 access to all documents and information submitted to the
4 agency in accordance with this section pursuant to the state
5 Freedom of Information Act. Records, reports or information
6 obtained from any persons under this article may be disclosed
7 to other officers, employees or authorized representatives of
8 this state or the United States Environmental Protection
9 Agency or of this state if the officers, employees or
10 authorized representatives are implementing the provisions of
11 this article or any other applicable law related to releases of
12 contaminants tanks that impact the state's water resources.

13 (b) In submitting data under this article, a person required
14 to provide the data may designate the data that he or she
15 believes is entitled to protection under this section and may
16 submit the designated data separately from other data
17 submitted under this article. A designation under this
18 subsection shall be made in writing and in a manner as the
19 secretary may prescribe.

20 (c) The Department of Environmental Protection shall
21 provide a copy of the compiled list of contaminants in each
22 zone of critical concern to the affected public water system,
23 the Bureau for Public Health, the Department of
24 Environmental Protection and the Division of Homeland
25 Security and Emergency Management. This will enable
26 those entities to possess a compiled list of the types,
27 quantities, characteristics and locations of all of the known
28 potential contaminants within the zone of critical concern for
29 each public water supply. If any of the submitted information
30 is requested to be kept confidential and good cause is found
31 to grant the request, for reasons of security or other legitimate
32 public interest concern, the protected information shall be
33 redacted from public view and kept confidential, and it shall
34 not be subject to public release in response to a Freedom of
35 Information Act request made under chapter twenty-nine-b of
36 this code.

§22-31-8. Inspections, monitoring and testing.

1 (a) For the purposes of developing or assisting in the
2 development of any rule, conducting any study, taking any
3 corrective action or enforcing any provision of this article,
4 any owner or operator of designated site of potential
5 contamination within a zone of critical concern shall, upon
6 request of the secretary:

7 (1) Furnish information relating to the site and potential
8 contaminants on the site, their aboveground and underground
9 storage tanks, their associated equipment and contents;

10 (2) Conduct reasonable monitoring or testing;

11 (3) Permit the secretary, at all reasonable times, to inspect
12 and copy records relating to the facilities and equipment used
13 to store or contain the potential contaminants; and

14 (4) Permit the secretary to have access to the site for
15 corrective action.

16 (b) For the purposes of developing or assisting in the
17 development of any rule, conducting any study, taking
18 corrective action or enforcing any provision of this article,
19 the secretary may:

20 (1) Enter at any time any establishment or other place on
21 the site or where the potential contaminant is located;

22 (2) Inspect and obtain samples of any fluid contained or
23 stored on the site from any person;

24 (3) Conduct monitoring or testing of the site and any
25 associated aboveground storage tanks, underground storage
26 tanks, associated equipment, contents or surrounding soils,
27 surface, water or groundwater; and

28 (4) Take corrective action as specified in this article.

29 (c) Each inspection shall be commenced and completed
30 with reasonable promptness.

31 (d) To ensure protection of the water resources of the
32 state and compliance with any provision of this article or rule
33 promulgated thereunder, the secretary shall inspect at least
34 annually any designated site of potential contamination which
35 is located within the zone of critical concern for a public
36 water system's surface water intake.

37 (e) Due to the potential impact of contaminants within a
38 zone of critical concern on public drinking water supplies,
39 whenever there is an apparent spill of a chemical or substance
40 within a zone of critical concern for a public water system,
41 the Director of the Bureau for Public Health, and his or her

42 representatives or designees, shall have the same right to
43 enter, inspect and conduct sampling and monitoring at any
44 site that is extended by this article to the Department of
45 Environmental Protection.

**§22-31-9. Prohibition of general NPDES permits within a zone
of critical concern for sites with aboveground
storage tanks; and authorizing the Division of
Environmental Protection to require individual
NPDES permit for any other site when deemed
appropriate.**

1 Because of the potential public health impact of pollution
2 to downstream public water intakes in a watershed basin
3 designated in an area of critical concern, on and after
4 September 1, 2014, any permittee which presently holds a
5 National Pollutant Discharge Elimination System (NPDES)
6 general permit pursuant to the West Virginia Water Pollution
7 Control Act which has an aboveground storage tank as
8 defined by article thirty of this chapter on a site which is
9 located within any public water system's zone of critical
10 concern must apply for and hold an individual permit under
11 that act. The secretary shall also have the authority to require
12 other holders of a general NPDES permit to obtain an
13 individual NPDES permit, when deemed appropriate to
14 protect the public water supply. Any general NPDES permit
15 held currently under that act shall remain in effect until the
16 individual NPDES permit is either issued or denied.

§22-31-10. Civil and criminal penalties.

1 (a) Any person who fails to comply with an order of the
2 secretary issued pursuant to this article in the time specified
3 in the order is liable for a civil penalty of not more than
4 \$25,000 for each day of continued noncompliance.

5 (b) Any owner or operator of a site designated as a
6 potential source of significant contamination within a zone of
7 critical concern above a public water intake who knowingly
8 fails to register or obtain a permit for an aboveground storage
9 tank or submits false information pursuant to this article is
10 liable for a civil penalty not to exceed \$10,000 for each
11 aboveground storage tank that is not registered or permitted
12 or for which false information is submitted.

13 (c) Any owner or operator of a site designated as a
14 potential source of significant contamination within a zone of
15 critical concern above a public water intake who fails to
16 comply with any requirement of this article or any standard
17 promulgated by the secretary pursuant to this article is subject
18 to a civil penalty not to exceed \$10,000 for each day of
19 violation.

20 (d) Any person who knowingly and intentionally violates
21 any provision of this article shall be guilty of a misdemeanor,
22 and, upon conviction thereof, shall be confined in a regional
23 jail for a period of time not exceeding one year, and be fined
24 an amount not to exceed \$25,000.

25 (e) Any person convicted of a second or subsequent
26 willful violation of subsections (b) or (c) of this section or
27 knowingly and willfully violates any provision of any permit,
28 rule or order issued under or subject to the provisions of this
29 article is guilty of a felony and, upon conviction, shall be
30 imprisoned in a correctional facility not less than one nor
31 more than three years, or fined not more than \$50,000 for
32 each day of violation, or both fined and imprisoned.

33 (f) Any person may be prosecuted and convicted under
34 the provisions of this section notwithstanding that none of the
35 administrative remedies provided in this article have been
36 pursued or invoked against said person and notwithstanding

37 that civil action for the imposition and collection of a civil
38 penalty or an application for an injunction under the
39 provisions of this article has not been filed against such
40 person.

41 (g) Where a person holding a permit is carrying out a
42 program of pollution abatement or remedial action in
43 compliance with the conditions and terms of the permit, the
44 person is not subject to criminal prosecution for pollution
45 recognized and authorized by the permit.

§22-31-11. Appeal to Environmental Quality Board.

1 A person aggrieved or adversely affected by an order of
2 the secretary made and entered in accordance with the
3 provisions of this article may appeal to the Environmental
4 Quality Board, pursuant to the provisions of article one,
5 chapter twenty-two-b of this code.

§22-31-12. Public Water System Supply Study Commission.

1 (a) There is hereby established the Public Water System
2 Supply Study Commission which is created for the purpose
3 of studying and reporting back to the Joint Committee on
4 Government and Finance on the following subject matters:

5 (1) A review and assessment of the effectiveness and the
6 quality of information contained in updated source water
7 protection plans required for certain public water systems by
8 the provisions of section nine-c, article one, chapter sixteen
9 of this code;

10 (2) A review and assessment of the effectiveness of
11 legislation enacted during the 2014 Regular Session of the
12 West Virginia Legislature, as it pertains to assisting public
13 water systems in identifying and reacting or responding to

14 identified potential sources of significant contamination, and
15 increasing public awareness and public participation in the
16 emergency planning and response process;

17 (3) The extent of available financing and funding
18 alternatives which are available to existing public water
19 systems to pursue projects which are designed to create
20 alternate sources of supply or increased stability of supply in
21 the event of a spill, release or contamination event which
22 impairs the water system's primary source of supply;

23 (4) A review and consideration of the recommendations
24 of the U. S. Chemical Safety and Hazard and Investigation
25 Board after its investigation of the Bayer CropScience
26 incident of 2008; and

27 (5) Any recommendations or suggestions the Study
28 Commission may offer to improve the infrastructure of
29 existing public water systems, to provide safe and reliable
30 sources of supplies, and to pursue other measures designed to
31 protect the integrity of public water service.

32 (b) The study commission shall consist of the following
33 twelve members, who shall be appointed and comprised as
34 follows:

35 (1) Four members appointed by the Governor, one of
36 whom shall be a professional engineer experienced in the
37 design and construction of public water systems; one of
38 whom shall be a hydrologist or other expert experienced in
39 determining the flow characteristics of rivers and streams;
40 one of whom shall be an environmental toxicologist or other
41 public health expert who is familiar with the impact of
42 contaminants on the human body; and one citizen
43 representative;

44 (2) One representative designated by the Rural Water
45 Association;

46 (3) One representative designated by the Municipal
47 League;

48 (4) The Secretary of the Department of Environmental
49 Protection or his or her designee;

50 (5) The Commissioner of the Bureau for Public Health or
51 his or her designee;

52 (6) The Director of the Division of Homeland Security
53 and Emergency Management or his or her designee;

54 (7) The Chairman of the Public Service Commission or
55 his or her designee;

56 (8) One nonvoting member appointed by the President of
57 the Senate; and

58 (9) One nonvoting member appointed by the Speaker of
59 the House of Delegates.

60 (c) Reports by the Commission shall be submitted to the
61 Joint Committee on Government and Finance on or before
62 December 15 of each year, beginning December 15, 2014.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2G. PUBLIC WATER UTILITIES MONITORING REQUIREMENTS.

§24-2G-1. Public water utilities required to install monitor for contaminants.

1 All public water utilities that provide water to more than
2 one hundred thousand customers, including public service
3 districts providing water service and municipally owned and
4 operated utilities, subject to the requirements and limitations
5 of this article, shall implement a regular monitoring system as
6 specified to the same technical capabilities for detection as
7 utilized by the Ohio River Valley Water Sanitation
8 Commission.

§24-2G-2. Requirements.

1 (a) Each public water utility, public service district or
2 municipal water system, as set forth in section one of this
3 article, shall provide testing for contamination of its water
4 supply by the following contaminants:

5 (1) Salts or ions;

6 (2) Metals, including heavy metals;

7 (3) Polar organic compounds;

8 (4) Nonpolar organic compounds;

9 (5) Volatile compounds, oils and other hydrocarbons;

10 (6) Pesticides; and

11 (7) Biotoxins.

12 (b) Each public water utility is empowered to determine
13 at its discretion which of the contaminants listed in
14 subsection (a) are most likely to contaminate its water supply,
15 and shall provide a monitoring system which shall detect the
16 three of the listed contaminants deemed most likely to affect
17 that water system: *Provided*, That each public water utility

18 shall file its list with the commission: *Provided, however,*
19 That any public water system serving over one hundred
20 thousand customers from any one treatment plant is requested
21 to test for all listed contaminants at each treatment plant:
22 *Provided further,* That if technology to adequately detect
23 contaminants, as required by this section proves to be not
24 feasible to implement, the public water utility shall report by
25 January 1, 2015, such to the Joint Committee on Government
26 and Finance with the reasons why such technology is not
27 feasible to obtain or use, and suggest alternatives.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

.....
Speaker of the House of Delegates

The within this
the..... Day of, 2014.

.....
Governor

